

114TH CONGRESS  
1ST SESSION

# S. 1145

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 30, 2015

Mr. CASEY (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Robert C. Byrd Mine Safety Protection Act of 2015”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References.

## TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

- Sec. 101. Independent accident investigations.
- Sec. 102. Subpoena authority and miner rights during inspections and investigations.
- Sec. 103. Designation of miner representative.
- Sec. 104. Additional amendments relating to inspections and investigations.

## TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Technical amendment.
- Sec. 202. Procedures and criteria for determining a pattern of violations.
- Sec. 203. Injunctive authority.
- Sec. 204. Revocation of approval of plans.
- Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other mine program or plan.
- Sec. 206. GAO study on MSHA underground mine plan approval.

## TITLE III—PENALTIES

- Sec. 301. Civil penalties.
- Sec. 302. Civil and criminal liability of officers, directors, and agents.
- Sec. 303. Criminal penalties.
- Sec. 304. Commission review of penalty assessments.
- Sec. 305. Delinquent payments and prejudgment interest.

## TITLE IV—MINERS' RIGHTS AND PROTECTIONS

- Sec. 401. Protection from retaliation.
- Sec. 402. Protection from loss of pay.
- Sec. 403. Underground coal miner employment standard for mines with patterns of violations.

## TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

- Sec. 501. Pre-shift review of mine conditions.
- Sec. 502. Rock dust standards.
- Sec. 503. Atmospheric monitoring systems.
- Sec. 504. Study on respirable dust standards.
- Sec. 505. Refresher training on miners' rights and responsibilities.
- Sec. 506. Authority to mandate additional training.
- Sec. 507. Brookwood-Sago Mine Safety Grants.
- Sec. 508. Certification of personnel.
- Sec. 509. Electronic records requirement.

## TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Assistance to States.
- Sec. 603. Authorization of cooperative agreements by NIOSH Office of Mine Safety and Health.
- Sec. 604. Double encumbrance; succession plan.

## TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

- Sec. 701. Coverage of public employees.

Sec. 702. Enhanced protections from retaliation.

Sec. 703. Victims' rights.

Sec. 704. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.

Sec. 705. Conforming amendments.

Sec. 706. Civil penalties.

Sec. 707. Criminal penalties.

Sec. 708. Penalties.

Sec. 709. Effective date.

## 1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment is expressed as an amendment to  
4 a section or other provision, the reference shall be consid-  
5 ered to be made to a section or other provision of the Fed-  
6 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801  
7 et seq.).

# 8 **TITLE I—ADDITIONAL INSPEC-** 9 **TION AND INVESTIGATION** 10 **AUTHORITY**

## 11 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

12 (a) IN GENERAL.—Section 103(b) (30 U.S.C.  
13 813(b)) is amended by striking “(b) For the purpose” and  
14 inserting the following:

15 “(b) ACCIDENT INVESTIGATIONS.—

16 “(1) IN GENERAL.—For all accident investiga-  
17 tions under this Act, the Secretary shall—

18 “(A) determine why the accident occurred;

19 “(B) determine whether there were viola-  
20 tions of law, mandatory health or safety stand-  
21 ards, or other requirements, and if there is evi-

dence of conduct that may constitute a violation of Federal criminal law, the Secretary may refer such evidence to the Attorney General; and

“(C) make recommendations to avoid any recurrence.

“(2) INDEPENDENT ACCIDENT INVESTIGATIONS.—

“(A) IN GENERAL.—There shall be, in addition to an accident investigation under paragraph (1), an independent investigation by an independent investigation panel (referred to in this subsection as the ‘Panel’) appointed under subparagraph (B) for—

“(i) any accident involving 3 or more deaths; or

“(ii) any accident that is of such severity or scale for potential or actual harm that, in the opinion of the Secretary of Health and Human Services, the accident merits an independent investigation.

“(B) APPOINTMENT.—

“(i) IN GENERAL.—As soon as practicable after an accident described in subparagraph (A), the Secretary of Health

1 and Human Services shall appoint 5 mem-  
2 bers for the Panel required under this  
3 paragraph from among individuals who  
4 have expertise in accident investigations,  
5 mine engineering, or mine safety and  
6 health that is relevant to the particular in-  
7 vestigation.

8 “(ii) CHAIRPERSON.—The Panel shall  
9 include, and be chaired by, a representative  
10 from the Office of Mine Safety and Health  
11 Research, of the National Institute for Oc-  
12 cupational Safety and Health (referred to  
13 in this subsection as ‘NIOSH’).

14 “(iii) CONFLICTS OF INTEREST.—  
15 Panel members, and staff and consultants  
16 assisting the Panel with an investigation,  
17 shall be free from conflicts of interest with  
18 regard to the investigation, and be subject  
19 to the same standards of ethical conduct  
20 for persons employed by the Secretary of  
21 Health and Human Services.

22 “(iv) COMPOSITION.—The Secretary  
23 of Health and Human Services shall ap-  
24 point as members of the Panel—

1 “(I) 1 operator of a mine or indi-  
2 vidual representing mine operators,  
3 and

4 “(II) 1 representative of a labor  
5 organization that represents miners,  
6 and may not appoint more than 1 of either  
7 such individuals as members of the Panel.

8 “(v) STAFF AND EXPENSES.—The Di-  
9 rector of NIOSH (referred to in this sub-  
10 section as the ‘Director’) shall designate  
11 NIOSH staff to facilitate the work of the  
12 Panel. The Director may accept as staff  
13 personnel on detail from other Federal  
14 agencies or reemploy annuitants. The de-  
15 tail of personnel under this paragraph may  
16 be on a non-reimbursable basis, and such  
17 detail shall be without interruption or loss  
18 of civil service status or privilege. The Di-  
19 rector shall have the authority to procure  
20 on behalf of the Panel such materials, sup-  
21 plies or services, including technical ex-  
22 perts, as requested in writing by a majority  
23 of the Panel.

24 “(vi) COMPENSATION AND TRAVEL.—  
25 All members of the Panel who are officers

1 or employees of the United States shall  
2 serve without compensation in addition to  
3 that received for their services as officers  
4 or employees of the United States. Each  
5 Panel member who is not an officer or em-  
6 ployee of the United States shall be com-  
7 pensated at a rate equal to the daily equiv-  
8 alent of the annual rate of basic pay pre-  
9 scribed for level IV of the Executive Sched-  
10 ule under section 5315 of title 5, United  
11 States Code, for each day (including travel  
12 time) during which such member is en-  
13 gaged in the performance of duties of the  
14 Panel. The members of the Panel shall be  
15 allowed travel expenses, including per diem  
16 in lieu of subsistence, at rates authorized  
17 for employees of agencies under subchapter  
18 1 of chapter 57 of title 5, United States  
19 Code, while away from their homes or reg-  
20 ular places of business in the performance  
21 of services for the Panel.

22 “(C) DUTIES.—The Panel shall—

23 “(i) assess and identify any factors  
24 that caused the accident, including defi-  
25 ciencies in safety management systems,

1 regulations, enforcement, industry prac-  
2 tices or guidelines, or organizational fail-  
3 ures;

4 “(ii) identify and evaluate any con-  
5 tributing actions or inactions of—

6 “(I) the operator;

7 “(II) any contractors or other  
8 persons engaged in mining-related  
9 functions at the site;

10 “(III) any State agency with  
11 oversight responsibilities;

12 “(IV) any agency or office within  
13 the Department of Labor;

14 “(V) the Federal Mine Safety  
15 and Health Review Commission; or

16 “(VI) any other person or entity  
17 (including equipment manufacturers);

18 “(iii) review the determinations and  
19 recommendations of the Secretary under  
20 paragraph (1);

21 “(iv) prepare a report that—

22 “(I) includes the findings regard-  
23 ing the causal factors described in  
24 clauses (i) and (ii);



1 “(II) identifies any strengths and  
2 weaknesses in the Secretary’s inves-  
3 tigation; and

4 “(III) includes recommendations,  
5 including interim recommendations  
6 where appropriate, to industry, labor  
7 organizations, State and Federal  
8 agencies, or Congress, regarding pol-  
9 icy, regulatory, enforcement, adminis-  
10 trative, or other changes, which, in  
11 the judgment of the Panel, would pre-  
12 vent a recurrence at other mines; and

13 “(v) publish such findings and rec-  
14 ommendations (excluding any portions  
15 which the Attorney General requests that  
16 the Secretary withhold in relation to a  
17 criminal referral) and hold public meetings  
18 to inform the mining community and fami-  
19 lies of affected miners of the Panel’s find-  
20 ings and recommendations.

21 “(D) HEARINGS; APPLICABILITY OF CER-  
22 TAIN FEDERAL LAW.—The Panel shall have the  
23 authority to conduct public hearings or meet-  
24 ings, but shall not be subject to the Federal Ad-  
25 visory Committee Act (5 U.S.C. App.). All pub-

1       lic hearings of the Panel shall be subject to the  
2       requirements under section 552b of title 5,  
3       United States Code.

4               “(E)       MEMORANDUM       OF       UNDER-  
5       STANDING.—Not later than 90 days after the  
6       date of enactment of the Robert C. Byrd Mine  
7       Safety Protection Act of 2015, the Secretary of  
8       Labor and the Secretary of Health and Human  
9       Services shall conclude and publically issue a  
10      memorandum of understanding that—

11              “(i) outlines administrative arrange-  
12      ments which will facilitate a coordination  
13      of efforts between the Secretary of Labor  
14      and the Panel, ensures that such Sec-  
15      retary’s investigation under paragraph (1)  
16      is not delayed or otherwise compromised by  
17      the activities of the Panel, and establishes  
18      a process to resolve any conflicts between  
19      such investigations;

20              “(ii) ensures that Panel members or  
21      staff will be able to participate in inves-  
22      tigation activities (such as mine inspections  
23      and interviews) related to the Secretary of  
24      Labor’s investigation and will have full ac-  
25      cess to documents that are assembled or

1 produced in such investigation, and en-  
2 sures that the Secretary of Labor will  
3 make all of the authority available to such  
4 Secretary under this section to obtain in-  
5 formation and witnesses which may be re-  
6 quested by such Panel; and

7 “(iii) establishes such other arrange-  
8 ments as are necessary to implement this  
9 paragraph.

10 “(F) PROCEDURES.—Not later than 90  
11 days after the date of enactment of the Robert  
12 C. Byrd Mine Safety Protection Act of 2015,  
13 the Secretary of Health and Human Services  
14 shall establish procedures to ensure the consist-  
15 ency and effectiveness of Panel investigations.  
16 In establishing such procedures, such Secretary  
17 shall consult with independent safety investiga-  
18 tion agencies, sectors of the mining industry,  
19 representatives of miners, families of miners in-  
20 volved in fatal accidents, State mine safety  
21 agencies, and mine rescue organizations. Such  
22 procedures shall include—

23 “(i) authority for the Panel to use evi-  
24 dence, samples, interviews, data, analyses,  
25 findings, or other information gathered by

1 the Secretary of Labor, as the Panel deter-  
2 mines valid;

3 “(ii) provisions to ensure confiden-  
4 tiality if requested by any witness, to the  
5 extent permitted by law, and prevent con-  
6 flicts of interest in witness representation;  
7 and

8 “(iii) provisions for preservation of  
9 public access to the Panel’s records  
10 through the Secretary of Health and  
11 Human Services.

12 “(G) SUBPOENAS; WITNESSES; CON-  
13 TEMPT.—

14 “(i) SUBPOENA AUTHORITY.—For the  
15 purpose of making any investigation of any  
16 accident or other occurrence relating to  
17 health or safety in a coal or other mine  
18 under this paragraph, the Director shall at  
19 the request of a majority of the Panel, or  
20 upon the initiative of such Director, sign  
21 and issue subpoenas for the attendance  
22 and testimony of witnesses and the produc-  
23 tion of relevant papers, books, and docu-  
24 ments, and administer oaths. Witnesses  
25 summoned shall be paid the same fees and

1           mileage that are paid witnesses in the  
2           courts of the United States.

3           “(ii) CONTUMACY.—In case of contu-  
4           macy or refusal to obey a subpoena served  
5           upon any person under this section, the  
6           district court of the United States for any  
7           district in which such person is found or  
8           resides or transacts business, upon applica-  
9           tion by the United States and after notice  
10          to such person, shall have jurisdiction to  
11          issue an order requiring such person to ap-  
12          pear and give testimony before the Direc-  
13          tor or Panel, or to appear and produce  
14          documents before the Director or Panel, or  
15          both, and any failure to obey such order of  
16          the court may be punished by such court  
17          as a contempt thereof.

18          “(iii) ADDITIONAL INVESTIGATIVE AU-  
19          THORITY.—In carrying out inspections and  
20          investigations under this subsection, the  
21          staff of the Director or Panel and attor-  
22          neys representing the Director or Panel  
23          are authorized to question any individual  
24          privately. Under this subparagraph, any  
25          individual who is willing to speak with or

1 provide a statement to the Director or  
2 Panel’s staff or their attorneys, may do so  
3 without the presence, involvement, or  
4 knowledge of the operator or the operator’s  
5 agents or attorneys. The Director or Panel  
6 shall keep the identity of an individual pro-  
7 viding such a statement confidential to the  
8 extent permitted by law. Nothing in this  
9 paragraph prevents any individual from  
10 being represented by that individual’s per-  
11 sonal attorney or other representative.

12 “(H) AUTHORIZATION OF APPROPRIA-  
13 TIONS.—There is authorized to be appropriated  
14 to carry out this subsection such sums as may  
15 be necessary.

16 “(3) POWERS AND PROCESSES.—For the pur-  
17 pose”.

18 (b) REPORTING REQUIREMENTS.—Section 511(a)  
19 (30 U.S.C. 958(a)) is amended by inserting after “501,”  
20 the following: “the status of implementation of rec-  
21 ommendations from each independent investigation panel  
22 under section 103(b) received in the preceding 5 years,”.

1 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**  
2 **ING INSPECTIONS AND INVESTIGATIONS.**

3 Section 103(b) (30 U.S.C. 813(b)), as so amended,  
4 is further amended by adding at the end the following:

5 “(4) **ADDITIONAL POWERS.**—For purposes of  
6 making inspections and investigations, the Secretary,  
7 or the Secretary’s designee, may sign and issue sub-  
8 poenas for the attendance and testimony of wit-  
9 nesses and the production of information, including  
10 all relevant data, papers, books, documents, and  
11 items of physical evidence, and may administer  
12 oaths. Witnesses summoned shall be paid the same  
13 fees that are paid witnesses in the courts of the  
14 United States. In carrying out inspections and inves-  
15 tigations under this subsection, authorized rep-  
16 resentatives of the Secretary and attorneys rep-  
17 resenting the Secretary are authorized to question  
18 any individual privately. Under this section, any in-  
19 dividual who is willing to speak with or provide a  
20 statement to such authorized representatives or at-  
21 torneys representing the Secretary may do so with-  
22 out the presence, involvement, or knowledge of the  
23 operator or the operator’s agents or attorneys. The  
24 Secretary shall keep the identity of an individual  
25 providing such a statement confidential to the extent  
26 permitted by law. Nothing in this paragraph pre-

1       vents any individual from being represented by that  
2       individual's personal attorney or other representa-  
3       tive.”.

4   **SEC. 103. DESIGNATION OF MINER REPRESENTATIVE.**

5       Section 103(f) (30 U.S.C. 813(f)) is amended by in-  
6       serting before the last sentence the following: “If any  
7       miner is entrapped, disabled, killed, or otherwise prevented  
8       as the result of an accident in such mine from designating  
9       such a representative directly, such miner's closest relative  
10      may act on behalf of such miner in designating such a  
11      representative. If any miner is not currently working in  
12      such mine as the result of an accident in such mine, but  
13      would be currently working in such mine but for such acci-  
14      dent, such miner may designate such a representative. A  
15      representative of miners shall have the right to participate  
16      in any accident investigation the Secretary initiates pursu-  
17      ant to subsection (b), including the right to participate  
18      in investigative interviews and to review all relevant pa-  
19      pers, books, documents, and records produced in connec-  
20      tion with the accident investigation, unless the Secretary,  
21      in consultation with the Attorney General, excludes rep-  
22      resentatives of miners from the investigation on the  
23      grounds that inclusion would interfere with or adversely  
24      impact a criminal investigation that is pending or under  
25      consideration.”.



1 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**  
2 **SPECTIONS AND INVESTIGATIONS.**

3 (a) HOURS OF INSPECTIONS.—Section 103(a) (30  
4 U.S.C. 813(a)) is amended by inserting after the third  
5 sentence the following: “Such inspections shall be con-  
6 ducted during the various shifts and days of the week dur-  
7 ing which miners are normally present in the mine to en-  
8 sure that the protections of this Act are afforded to all  
9 miners working all shifts.”.

10 (b) REVIEW OF PATTERN OF VIOLATIONS.—Section  
11 103(a) (30 U.S.C. 813(a)), as so amended, is further  
12 amended by inserting before the last sentence the fol-  
13 lowing: “Upon request by an operator or authorized rep-  
14 resentative of such operator, during the course of the in-  
15 spections required to carry out the requirements of clauses  
16 (3) and (4) or (at the discretion of the Secretary) during  
17 the pre-inspection conference, the Secretary shall review  
18 with the appropriate mine officials the Secretary’s most  
19 recent determination regarding whether such operator has  
20 a pattern of violations under section 104(e) for the appli-  
21 cable coal or other mine.”.

22 (c) INJURY AND ILLNESS REPORTING.—Section  
23 103(d) (30 U.S.C. 813(d)) is amended by striking the last  
24 sentence and inserting the following: “The records to be  
25 kept and made available by the operator of the mine shall  
26 include man-hours worked, and occupational injuries and

1 illnesses, of the miners employed by, or under the direction  
2 or authority of, such operator, and shall be maintained  
3 separately for each mine and be reported at a frequency  
4 determined by the Secretary, but not less than annually.  
5 Independent contractors (within the meaning of section  
6 3(d)) shall be responsible for reporting accidents, occupa-  
7 tional injuries and illnesses, and man-hours worked for  
8 each mine with respect to the miners in their employ or  
9 under their direction or authority. Such independent con-  
10 tractors shall so report at a frequency determined by the  
11 Secretary, but not less than annually. Reports or records  
12 of operators required and submitted to the Secretary  
13 under this subsection shall be signed and certified as accu-  
14 rate and complete by a knowledgeable and responsible per-  
15 son possessing a certification, registration, qualification,  
16 or other approval under section 118. Knowingly falsifying  
17 such reports or records shall be grounds for revoking such  
18 certification, registration, qualification, or other approval  
19 under the standards established under subsection (b)(1)  
20 of such section.”.

21 (d) ORDERS FOLLOWING AN ACCIDENT.—Section  
22 103(k) (30 U.S.C. 813(k)) is amended by striking “, when  
23 present,”.

24 (e) CONFLICT OF INTEREST IN THE REPRESENTA-  
25 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)), as

1 amended by this section, is further amended by adding  
 2 at the end the following: “During inspections and inves-  
 3 tigations under this section, and during any litigation  
 4 under this Act, no attorney shall represent or purport to  
 5 represent both the operator of a coal or other mine and  
 6 any other individual, unless such individual has knowingly  
 7 and voluntarily waived all actual and reasonably foresee-  
 8 able conflicts of interest resulting from such representa-  
 9 tion. The Secretary is authorized to take such actions as  
 10 the Secretary considers appropriate to ascertain whether  
 11 such individual has knowingly and voluntarily waived all  
 12 such conflicts of interest. If the Secretary finds that such  
 13 an individual cannot be represented adequately by such  
 14 an attorney due to such conflicts of interest, the Secretary  
 15 may petition the appropriate United States district court  
 16 which shall have jurisdiction to disqualify such attorney  
 17 as counsel to such individual in the matter. The Secretary  
 18 may make such a motion as part of an ongoing related  
 19 civil action or as a miscellaneous action.”.

## 20 **TITLE II—ENHANCED** 21 **ENFORCEMENT AUTHORITY**

### 22 **SEC. 201. TECHNICAL AMENDMENT.**

23 Section 104(d)(1) (30 U.S.C. 814(d)(1)) is amend-  
 24 ed—

25 (1) in the first sentence—

1 (A) by striking “any mandatory health or  
2 safety standard” and inserting “any provision  
3 of this Act, including any mandatory health or  
4 safety standard or regulation promulgated  
5 under this Act”; and

6 (B) by striking “such mandatory health or  
7 safety standards” and inserting “such provi-  
8 sions, regulations, or mandatory health or safe-  
9 ty standards”; and

10 (2) in the second sentence, by striking “any  
11 mandatory health or safety standard” and inserting  
12 “any provision of this Act, including any mandatory  
13 health or safety standard or regulation promulgated  
14 under this Act,”.

15 **SEC. 202. PROCEDURES AND CRITERIA FOR DETERMINING**  
16 **A PATTERN OF VIOLATIONS.**

17 Part 104 of chapter I of title 30, Code of Federal  
18 Regulations, as revised by the Federal Mine Safety and  
19 Health Administration and published at 78 Fed. Reg.  
20 5073 (January 23, 2013), shall have the force and effect  
21 of law and shall remain in effect subject to an Act of Con-  
22 gress.

23 **SEC. 203. INJUNCTIVE AUTHORITY.**

24 Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended  
25 by striking “a pattern of violation of” and all that follows

1 and inserting “a course of conduct that in the judgment  
 2 of the Secretary constitutes a continuing hazard to the  
 3 health or safety of miners, including violations of this Act  
 4 or of mandatory health or safety standards or regulations  
 5 under this Act.”.

6 **SEC. 204. REVOCATION OF APPROVAL OF PLANS.**

7 Section 105 (30 U.S.C. 815) is amended—

8 (1) by redesignating subsection (d) as sub-  
 9 section (e);

10 (2) in subsection (a), by striking “subsection  
 11 (d)” and inserting “subsection (e)”; and

12 (3) by inserting after subsection (c) the fol-  
 13 lowing:

14 “(d) REVOCATION OF APPROVAL OF PROGRAMS OR  
 15 PLANS.—

16 “(1) REVOCATION.—If the Secretary finds that  
 17 any program or plan of an operator, or part thereof,  
 18 that was approved by the Secretary under this Act  
 19 is based on inaccurate information or that cir-  
 20 cumstances that existed when such program or plan  
 21 was approved have materially changed and that con-  
 22 tinued operation of such mine or an area of such  
 23 mine under such program or plan constitutes a haz-  
 24 ard to the safety or health of miners, the Secretary  
 25 shall revoke the approval of such program or plan.

1           “(2) WITHDRAWAL ORDERS.—Upon revocation  
 2           of the approval of a program or plan under para-  
 3           graph (1), the Secretary may immediately issue an  
 4           order requiring the operator to cause all persons, ex-  
 5           cept those persons referred to in section 104(c), to  
 6           be withdrawn from such mine or an area of such  
 7           mine, and to be prohibited from entering such mine  
 8           or such area, until the operator has submitted and  
 9           the Secretary has approved a new plan.”.

10 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**  
 11 **IFY, OR REVOKE A COAL OR OTHER MINE**  
 12 **PROGRAM OR PLAN.**

13           Section 105(e) (30 U.S.C. 815(e)), as so redesignated  
 14 by section 204(1), is amended by adding at the end the  
 15 following: “In any proceeding in which a party challenges  
 16 the Secretary’s decision whether to approve, modify, or re-  
 17 voke a coal or other mine program or plan under this Act,  
 18 the Commission shall affirm the Secretary’s decision un-  
 19 less the challenging party establishes that such decision  
 20 was arbitrary, capricious, an abuse of discretion, or other-  
 21 wise not in accordance with law.”.

22 **SEC. 206. GAO STUDY ON MSHA UNDERGROUND MINE PLAN**  
 23 **APPROVAL.**

24           Not later than 1 year after the date of enactment  
 25 of this Act, the Comptroller General of the United States

1 shall provide a report to Congress on the timeliness of ap-  
 2 proval by the Mine Safety and Health Administration of  
 3 plans, and amendments to such plans, for underground  
 4 coal mines under the Federal Mine Safety and Health Act  
 5 of 1977 (30 U.S.C. 801 et seq.), including—

6 (1) factors that contribute to any delays in the  
 7 approval of such plans; and

8 (2) as appropriate, recommendations for im-  
 9 proving timeliness of plan review and for achieving  
 10 prompt decisions regarding such approval.

## 11 **TITLE III—PENALTIES**

### 12 **SEC. 301. CIVIL PENALTIES.**

13 (a) TARGETED PENALTIES.—Section 110(b) (30  
 14 U.S.C. 820(b)) is amended by adding at the end the fol-  
 15 lowing:

16 “(3) Any person may be assessed a civil penalty  
 17 of not more than \$220,000 for—

18 “(A) any change to a ventilation system or  
 19 ventilation control in a coal or other mine,  
 20 where such ventilation system or control is re-  
 21 quired by a ventilation plan, safety standard, or  
 22 order, and such change is made without prior  
 23 approval of the Secretary and diminishes the  
 24 level of protection below the minimum require-

1           ments of the approved ventilation plan or appli-  
2           cable safety standard or order;

3           “(B) a violation of a mandatory health or  
4           safety standard requiring rock dusting in a coal  
5           mine;

6           “(C) a violation of the prohibition under  
7           section 103 on providing advance notice of an  
8           inspection; or

9           “(D) a violation of a mandatory health or  
10          safety standard requiring examinations of work  
11          areas in an underground coal mine.”.

12          (b) INCREASED CIVIL PENALTIES FOR PATTERNS OF  
13 VIOLATIONS.—Section 110(b) (30 U.S.C. 820(b)), as so  
14 amended, is further amended by adding at the end the  
15 following:

16          “(4) Notwithstanding any other provision of this Act,  
17 an operator of a coal or other mine that has established  
18 a pattern of violations under section 104(e) shall be as-  
19 sessed an increased civil penalty for any violation of this  
20 Act, including any mandatory health or safety standard  
21 or regulation promulgated under this Act. Such increased  
22 penalty shall be twice the amount that would otherwise  
23 be assessed for the violation under this Act, including the  
24 regulations promulgated under this Act, subject to the



1 maximum civil penalty established for the violation under  
 2 this Act.”.

3 (c) CIVIL PENALTY FOR RETALIATION.—Section  
 4 110(a) (30 U.S.C. 820(a)) is amended—

5 (1) by redesignating paragraph (4) as para-  
 6 graph (5); and

7 (2) by inserting after paragraph (3) the fol-  
 8 lowing:

9 “(4) If any person violates section 105(c), the Sec-  
 10 retary shall propose, and the Commission shall assess, a  
 11 civil penalty of not less than \$10,000 or more than  
 12 \$100,000 for the first occurrence of such violation, and  
 13 not less than \$20,000 or more than \$200,000 for any sub-  
 14 sequent violation, during any 3-year period.”.

15 (d) TECHNICAL CORRECTION.—Section 110(a)(1)  
 16 (30 U.S.C. 820(a)(1)) is amended by inserting “including  
 17 any regulation promulgated under this Act,” after “this  
 18 Act,”.

19 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**  
 20 **RECTORS, AND AGENTS.**

21 Section 110(c) (30 U.S.C. 820(c)) is amended to read  
 22 as follows:

23 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,  
 24 DIRECTORS, AND AGENTS.—

1           “(1) CIVIL PENALTIES.—Whenever an operator  
2           engages in conduct for which the operator is subject  
3           to a civil penalty under this section, any director, of-  
4           ficer, or agent of such operator who knowingly au-  
5           thorizes, orders, or carries out such conduct, or who  
6           knowingly authorizes, orders, or carries out any pol-  
7           icy or practice that results in such conduct (having  
8           reason to believe such a result would occur), shall be  
9           subject to the same civil penalty under this section  
10          as such operator.

11          “(2) CRIMINAL PENALTIES.—Whenever an op-  
12          erator engages in conduct for which the operator is  
13          subject to a criminal penalty under subsection (d),  
14          any director, officer, or agent of such operator who  
15          knowingly authorizes, orders, or carries out such  
16          conduct, or who knowingly authorizes, orders, or  
17          carries out a policy or practice that results in such  
18          conduct (knowing that such a result would occur),  
19          shall be subject to the same penalty under para-  
20          graph (1), (2), or (3) of subsection (d) as such oper-  
21          ator.”.

22 **SEC. 303. CRIMINAL PENALTIES.**

23          (a) IN GENERAL.—Section 110(d) (30 U.S.C.  
24 820(d)) is amended to read as follows:

25          “(d) CRIMINAL PENALTIES.—

1           “(1) IN GENERAL.—Subject to paragraph (2),  
2           any operator shall, upon conviction, be assessed a  
3           fine of not more than \$250,000, imprisoned for not  
4           more than 1 year, or both, if such operator know-  
5           ingly—

6                   “(A) violates a mandatory health or safety  
7           standard; or

8                   “(B) violates (or fails or refuses to comply  
9           with) any order issued under section 104 or  
10          107, or any order incorporated in a final deci-  
11          sion issued under this Act (except an order in-  
12          corporated in a decision under subsection (a)(1)  
13          or section 105(c)).

14          “(2) PREVIOUS CONVICTION.—Any operator  
15          who commits a violation under paragraph (1) after  
16          having been previously convicted of a violation under  
17          such paragraph and knows or has reason to know  
18          that such subsequent violation has the potential to  
19          expose a miner to a risk of serious injury, serious ill-  
20          ness, or death, shall, upon such subsequent convic-  
21          tion, be fined not more than \$1,000,000, or impris-  
22          oned for not more than 5 years, or both.

23          “(3) SIGNIFICANT RISK OF SERIOUS INJURY,  
24          SERIOUS ILLNESS, OR DEATH.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), any operator shall, upon conviction,  
3 be fined not more than \$1,000,000 or impris-  
4 oned for not more than 5 years, or both, if such  
5 operator recklessly exposes a miner to a signifi-  
6 cant risk of serious injury, serious illness, or  
7 death, by knowingly—

8           “(i) tampering with or disabling a re-  
9 quired safety device (except with express  
10 authorization from the Secretary);

11           “(ii) violating a mandatory health or  
12 safety standard; or

13           “(iii) violating (or failing or refusing  
14 to comply with) an order issued under sec-  
15 tion 104 or 107, or any order incorporated  
16 in a final decision issued under this Act  
17 (except an order incorporated in a decision  
18 under subsection (a)(1) or section 105(c)).

19           “(B) EXCEPTION.—Any operator who com-  
20 mits a violation under subparagraph (A) after  
21 having been previously convicted of a violation  
22 under such subparagraph shall, upon such sub-  
23 sequent conviction, be fined not more than  
24 \$2,000,000, or imprisoned for not more than  
25 10 years, or both.

1           “(4) INTERFERENCE WITH EMPLOYMENT OR  
2 LIVELIHOOD.—

3           “(A) IN GENERAL.—Any operator shall be  
4 fined under title 18, United States Code, im-  
5 prisoned for not more than 5 years, or both, if  
6 such operator knowingly, and with any intent  
7 described in subparagraph (B), interferes with  
8 the lawful employment or livelihood of a person,  
9 or the spouse, sibling, child, or parent of a per-  
10 son, because such person, spouse, sibling, child,  
11 or parent provides information, in reasonable  
12 belief that such information is true and related  
13 to an apparent health or safety violation (or to  
14 an apparent unhealthy or unsafe condition, pol-  
15 icy, or practice) under this Act, to an author-  
16 ized representative of the Secretary, to a State  
17 or local mine safety or health officer or official,  
18 or to any other law enforcement officer or offi-  
19 cial.

20           “(B) INTENT.—The intent required under  
21 subparagraph (A) is the intent to—

22           “(i) retaliate against a person, spouse,  
23 sibling, child, or parent described in such  
24 subparagraph; or

1 “(ii) prevent such person, spouse, sib-  
 2 ling, child, or parent from providing the in-  
 3 formation as described in such subpara-  
 4 graph.”.

5 (b) ADVANCE NOTICE OF INSPECTIONS.—

6 (1) IN GENERAL.—Section 110(e) (30 U.S.C.  
 7 820(e)) is amended to read as follows:

8 “(e) ADVANCE NOTICE OF INSPECTIONS.—

9 “(1) IN GENERAL.—Subject to paragraph (2),  
 10 any person (other than the Secretary of Health and  
 11 Human Services with respect to inspections under  
 12 clauses (1) and (2) of section 103(a)) who know-  
 13 ingly, with the intent to give advance notice of an  
 14 inspection conducted, or to be conducted, under this  
 15 Act and thereby with the intent to impede, interfere  
 16 with, or frustrate such inspection, engages in, or di-  
 17 rects another person to engage in, conduct that a  
 18 reasonable person would expect to result in such ad-  
 19 vance notice, shall be fined under title 18, United  
 20 States Code, imprisoned for not more than 5 years,  
 21 or both.

22 “(2) OFFENSE BY A MINER.—Any miner (other  
 23 than a director, officer, or agent of the operator in-  
 24 volved) who commits the offense described in para-  
 25 graph (1) at the direction of a superior shall be

1        fined under title 18, United States Code, imprisoned  
 2        not more than 1 year, or both, unless such miner  
 3        commits a subsequent offense under this subsection  
 4        (without regard to whether the offense was com-  
 5        mitted at the direction of a superior) in which case  
 6        such miner shall be fined for such subsequent of-  
 7        fense under title 18, United States Code, imprisoned  
 8        for not more than 5 years, or both.”.

9            (2) POSTING OF ADVANCE NOTICE PEN-  
 10        ALTIES.—Section 109 (30 U.S.C. 819) is amended  
 11        by adding at the end the following:

12        “(e) POSTING OF ADVANCE NOTICE PENALTIES.—  
 13        Each operator of a coal or other mine shall post, on the  
 14        bulletin board described in subsection (a) and in a con-  
 15        spicuous place near each staffed entrance to the mine  
 16        property, a notice stating, in a form and manner to be  
 17        prescribed by the Secretary—

18            “(1) that it is unlawful under section 110(e) for  
 19        any person (other than the Secretary of Health and  
 20        Human Services with respect to inspections under  
 21        clauses (1) and (2) of section 103(a)), with the in-  
 22        tent to impede, interfere with, or frustrate an in-  
 23        spection conducted or to be conducted under this  
 24        Act, to engage in, or direct another person to engage  
 25        in, any conduct that a reasonable person would ex-

1       pect to result in advance notice of such inspection;  
 2       and

3               “(2) the maximum penalties for a violation  
 4       under section 110(e).”.

5 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**  
 6 **MENTS.**

7       Section 110(i) (30 U.S.C. 820(i)) is amended by  
 8 striking “In assessing civil monetary penalties, the Com-  
 9 mission shall consider” and inserting the following: “In  
 10 any review of a citation and proposed penalty assessment  
 11 contested by an operator, the Commission shall assess not  
 12 less than the penalty derived by using the same method-  
 13 ology (including any point system) prescribed in regula-  
 14 tions under this Act, so as to ensure consistency in oper-  
 15 ator penalty assessments, except that the Commission may  
 16 assess a penalty for less than the amount that would result  
 17 from the utilization of such methodology if the Commis-  
 18 sion finds that there are extraordinary circumstances. If  
 19 there is no such methodology prescribed for a citation or  
 20 there are such extraordinary circumstances, the Commis-  
 21 sion shall assess the penalty by considering”.

22 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**  
 23 **TEREST.**

24       (a) PRE-FINAL ORDER INTEREST.—Section 110(j)  
 25 (30 U.S.C. 820(j)) is amended by striking the second and



1 third sentences and inserting the following: “Pre-final  
 2 order interest on such penalties shall begin to accrue on  
 3 the date the operator contests a citation issued under this  
 4 Act, including any mandatory health or safety standard  
 5 or regulation promulgated under this Act, and shall end  
 6 upon the issuance of the final order. Such pre-final order  
 7 interest shall be calculated at the current underpayment  
 8 rate determined by the Secretary of the Treasury pursu-  
 9 ant to section 6621 of the Internal Revenue Code of 1986,  
 10 and shall be compounded daily. Post-final order interest  
 11 shall begin to accrue 30 days after the date a final order  
 12 of the Commission or the court is issued, and shall be  
 13 charged at the rate of 8 percent per annum.”.

14 (b) ENSURING PAYMENT OF PENALTIES.—

15 (1) AMENDMENTS.—Section 110 (30 U.S.C.  
 16 820) is further amended—

17 (A) by redesignating subsection (l) as sub-  
 18 section (m); and

19 (B) by inserting after subsection (k) the  
 20 following:

21 “(l) ENSURING PAYMENT OF PENALTIES.—

22 “(1) DELINQUENT PAYMENT LETTER.—If the  
 23 operator of a coal or other mine fails to pay any civil  
 24 penalty assessment that has become a final order of  
 25 the Commission or a court within 45 days after such

1       assessment became a final order, the Secretary shall  
2       send the operator a letter advising the operator of  
3       the consequences under this subsection of such fail-  
4       ure to pay. The letter shall also advise the operator  
5       of the opportunity to enter into or modify a payment  
6       plan with the Secretary based upon a demonstrated  
7       inability to pay, the procedure for entering into such  
8       plan, and the consequences of not entering into or  
9       not complying with such plan.

10       “(2) WITHDRAWAL ORDERS FOLLOWING FAIL-  
11       URE TO PAY.—If an operator that receives a letter  
12       under paragraph (1) has not paid the assessment by  
13       the date that is 180 days after such assessment be-  
14       came a final order and has not entered into a pay-  
15       ment plan with the Secretary, the Secretary shall  
16       issue an order requiring such operator to cause all  
17       persons, except those referred to in section 104(c),  
18       to be withdrawn from, and to be prohibited from en-  
19       tering, the mine that is covered by the final order  
20       described in paragraph (1), until the operator pays  
21       such assessment in full (including interest and ad-  
22       ministrative costs) or enters into a payment plan  
23       with the Secretary. If such operator enters into a  
24       payment plan with the Secretary and at any time  
25       fails to comply with the terms specified in such pay-

1       ment plan, the Secretary shall issue an order requir-  
 2       ing such operator to cause all persons, except those  
 3       referred to in section 104(c), to be withdrawn from  
 4       the mine that is covered by such final order, and to  
 5       be prohibited from entering such mine, until the op-  
 6       erator rectifies the noncompliance with the payment  
 7       plan in the manner specified in such payment  
 8       plan.”.

9               (2) APPLICABILITY AND EFFECTIVE DATE.—  
 10       The amendments made by paragraph (1) shall apply  
 11       to all unpaid civil penalty assessments under the  
 12       Federal Mine Safety and Health Act of 1977 (30  
 13       U.S.C. 801 et seq.), except that, for any unpaid civil  
 14       penalty assessment that became a final order of the  
 15       Commission or a court before the date of enactment  
 16       of this Act, the time periods under section 110(l) of  
 17       the Federal Mine Safety and Health Act of 1977  
 18       (30 U.S.C. 820(l)), as so amended, shall be cal-  
 19       culated as beginning on the date of enactment of  
 20       this Act instead of on the date of the final order.

## 21   **TITLE IV—MINERS’ RIGHTS AND** 22       **PROTECTIONS**

### 23   **SEC. 401. PROTECTION FROM RETALIATION.**

24       Section 105(c) (30 U.S.C. 815(c)) is amended to read  
 25   as follows:

1 “(c) PROTECTION FROM RETALIATION.—

2 “(1) RETALIATION PROHIBITED.—

3 “(A) RETALIATION FOR COMPLAINT OR  
4 TESTIMONY.—No person shall discharge or in  
5 any manner discriminate against, cause to be  
6 discharged or cause discrimination against, or  
7 otherwise interfere with the exercise of the stat-  
8 utory rights of any miner or other employee of  
9 an operator, representative of miners, or appli-  
10 cant for employment at a mine of such operator  
11 (including the spouse, sibling, child, or parent  
12 of such miner, employee, representative, or ap-  
13 plicant, if such spouse, sibling, child, or parent  
14 is employed or applying for employment at a  
15 mine under the control of such operator), be-  
16 cause—

17 “(i) such miner, employee, representa-  
18 tive, or applicant—

19 “(I) has filed or made a com-  
20 plaint, or is about to file or make a  
21 complaint, including a complaint noti-  
22 fying such operator or the operator’s  
23 agent, or the representative of the  
24 miners at such mine, of an alleged

1 danger or safety or health violation in  
2 such mine;

3 “(II) has instituted or caused to  
4 be instituted, or is about to institute  
5 or cause to be instituted, any pro-  
6 ceeding under or related to this Act;

7 “(III) has testified, or is about to  
8 testify in any such proceeding or tes-  
9 tify before Congress or in any Federal  
10 or State proceeding related to safety  
11 or health in a coal or other mine;

12 “(IV) has exercised on behalf of  
13 any individual, including such miner,  
14 employee, representative, or applicant,  
15 any such statutory right;

16 “(V) has reported to such oper-  
17 ator or agent any injury or illness; or

18 “(VI) has refused to violate any  
19 provision of this Act, including any  
20 mandatory health or safety standard  
21 or regulation;

22 “(ii) such miner is the subject of med-  
23 ical evaluations and potential transfer  
24 under a standard published pursuant to  
25 section 101; or

1 “(iii) where the discharge, discrimina-  
 2 tion, or other retaliation was based on a  
 3 suspicion or belief that such miner, em-  
 4 ployee, representative, or applicant en-  
 5 gaged in, or is about to engage in, any of  
 6 the activities described in clause (i).

7 “(B) RETALIATION FOR REFUSAL TO PER-  
 8 FORM DUTIES.—

9 “(i) IN GENERAL.—No person shall  
 10 discharge or in any manner discriminate  
 11 against a miner or other employee of an  
 12 operator, or applicant for employment at a  
 13 mine of such operator, for refusing to per-  
 14 form the duties of a miner, other employee,  
 15 or applicant if such miner, other employee,  
 16 or applicant has a good-faith and reason-  
 17 able belief that performing such duties  
 18 would pose a safety or health hazard to  
 19 such miner, other employee, or applicant,  
 20 or to any other miner or employee.

21 “(ii) STANDARD.—For purposes of  
 22 clause (i), the circumstances causing the  
 23 miner’s, other employee’s, or applicant’s  
 24 good-faith belief that performing such du-  
 25 ties would pose a safety or health hazard

1           shall be of such a nature that a reasonable  
2           person, under the circumstances con-  
3           fronting the miner, other employee, or ap-  
4           plicant, would conclude that there is such  
5           a hazard. In order to qualify for protection  
6           under this paragraph, the miner, other em-  
7           ployee, or applicant, when practicable, shall  
8           have communicated or attempted to com-  
9           municate the safety or health concern to  
10          the operator and have not received from  
11          the operator a response reasonably cal-  
12          culated to allay such concern.

13           “(2) COMPLAINT.—Any miner or other em-  
14          ployee of an operator, representative of miners, or  
15          applicant for employment at a mine of such operator  
16          who believes that he or she has been discharged, dis-  
17          ciplined, or otherwise discriminated against by any  
18          person in violation of paragraph (1) may file a com-  
19          plaint with the Secretary alleging such discrimina-  
20          tion not later than 180 days after the later of—

21                   “(A) the last date on which an alleged vio-  
22                   lation of paragraph (1) occurs; or

23                   “(B) the date on which such miner, em-  
24                   ployee, representative, or applicant knows or

1           should reasonably have known that such alleged  
2           violation occurred.

3           “(3) INVESTIGATION AND HEARING.—

4                 “(A) COMMENCEMENT OF INVESTIGATION  
5           AND INITIAL DETERMINATION.—Upon receipt  
6           of a complaint under paragraph (2), the Sec-  
7           retary shall—

8                 “(i) forward a copy of the complaint  
9                 to the respondent;

10                “(ii) commence an investigation with-  
11               in 15 days of the Secretary’s receipt of the  
12               complaint; and

13                “(iii) as soon as practicable after com-  
14               mencing the investigation under clause (ii),  
15               make the determination required under  
16               subparagraph (B).

17               “(B) REINSTATEMENT.—If the Secretary  
18               finds that a complaint under paragraph (2) was  
19               not frivolously brought, the Commission, on an  
20               expedited basis upon application of the Sec-  
21               retary, shall order the immediate reinstatement  
22               of the miner, employee, or representative de-  
23               scribed in such paragraph until there has been  
24               a final Commission order disposing of the un-  
25               derlying complaint. If either the Secretary or



1 such miner, employee, or representative pursues  
2 the underlying complaint, such reinstatement  
3 shall remain in effect until the Commission has  
4 disposed of such complaint on the merits, re-  
5 gardless of whether the Secretary pursues such  
6 complaint by filing a complaint under subpara-  
7 graph (D) or the miner or other employee pur-  
8 sues such complaint by filing an action under  
9 paragraph (4). If neither the Secretary nor  
10 such miner, employee, or representative pursues  
11 the underlying complaint within the periods  
12 specified in paragraph (4), such reinstatement  
13 shall remain in effect until such time as the  
14 Commission may, upon motion of the operator  
15 and after providing notice and an opportunity  
16 to be heard to the parties, vacate such com-  
17 plaint for failure to prosecute.

18 “(C) INVESTIGATION.—Such investigation  
19 shall include interviewing the complainant  
20 and—

21 “(i) providing the respondent an op-  
22 portunity to submit to the Secretary a  
23 written response to the complaint and to  
24 present statements from witnesses or pro-  
25 vide evidence; and

1           “(ii) providing the complainant an op-  
2           portunity to receive any statements or evi-  
3           dence provided to the Secretary and to  
4           provide additional information or evidence,  
5           or to rebut any statements or evidence.

6           “(D) ACTION BY THE SECRETARY.—If,  
7           upon such investigation, the Secretary deter-  
8           mines that the provisions of this subsection  
9           have been violated, the Secretary shall imme-  
10          diately file a complaint with the Commission,  
11          with service upon the alleged violator and the  
12          miner, employee, representative, or applicant  
13          described in paragraph (2) alleging such dis-  
14          crimination or interference and propose an  
15          order granting appropriate relief.

16          “(E) ACTION OF THE COMMISSION.—The  
17          Commission shall afford an opportunity for a  
18          hearing on the record (in accordance with sec-  
19          tion 554 of title 5, United States Code, but  
20          without regard to subsection (a)(3) of such sec-  
21          tion) and thereafter shall issue an order, based  
22          upon findings of fact, affirming, modifying, or  
23          vacating the Secretary’s proposed order, or di-  
24          recting other appropriate relief. Such order  
25          shall become final 30 days after its issuance.

1       The complaining miner, employee, representa-  
2       tive, or applicant described in paragraph (2)  
3       may present additional evidence on his or her  
4       own behalf during any hearing held pursuant to  
5       this paragraph.

6               “(F) RELIEF.—The Commission shall have  
7       authority in such proceedings to require a per-  
8       son committing a violation of this subsection to  
9       take such affirmative action to abate the viola-  
10      tion and prescribe a remedy as the Commission  
11      considers appropriate, including—

12               “(i) the rehiring or reinstatement of  
13      the miner, employee, or representative de-  
14      scribed in paragraph (2) with back pay  
15      and interest and without loss of position or  
16      seniority, and restoration of the terms,  
17      rights, conditions, and privileges associated  
18      with the complainant’s employment;

19               “(ii) any other compensatory and con-  
20      sequential damages sufficient to make the  
21      complainant whole, and exemplary dam-  
22      ages where appropriate; and

23               “(iii) expungement of all warnings,  
24      reprimands, or derogatory references that  
25      have been placed in paper or electronic

1 records or databases of any type relating  
2 to the actions by the complainant that  
3 gave rise to the unfavorable personnel ac-  
4 tion, and, at the complainant's direction,  
5 transmission of a copy of the decision on  
6 the complaint to any person whom the  
7 complainant reasonably believes may have  
8 received such unfavorable information.

9 “(4) NOTICE TO AND ACTION OF COMPLAIN-  
10 ANT.—

11 “(A) NOTICE TO COMPLAINANT.—Not  
12 later than 90 days after the receipt of a com-  
13 plaint filed under paragraph (2), the Secretary  
14 shall notify, in writing, the miner, employee,  
15 representative, or applicant described in para-  
16 graph (2) of the determination of such Sec-  
17 retary on whether a violation has occurred.

18 “(B) ACTION OF COMPLAINANT.—If the  
19 Secretary, upon investigation, determines that  
20 the provisions of this subsection have not been  
21 violated, the complainant shall have the right,  
22 within 30 days after receiving notice of the Sec-  
23 retary's determination, to file an action in his  
24 or her own behalf before the Commission,

1 charging discrimination or interference in viola-  
2 tion of paragraph (1).

3 “(C) HEARING AND DECISION.—The Com-  
4 mission shall afford an opportunity for a hear-  
5 ing on the record (in accordance with section  
6 554 of title 5, United States Code, but without  
7 regard to subsection (a)(3) of such section),  
8 and thereafter shall issue an order, based upon  
9 findings of fact, dismissing or sustaining the  
10 complainant’s charges and, if the charges are  
11 sustained, granting such relief as it deems ap-  
12 propriate as described in paragraph (3)(F).  
13 Such order shall become final 30 days after its  
14 issuance.

15 “(5) BURDEN OF PROOF.—In adjudicating a  
16 complaint pursuant to this subsection, the Commis-  
17 sion may determine that a violation of paragraph (1)  
18 has occurred only if the complainant demonstrates  
19 that any conduct described in paragraph (1) with re-  
20 spect to the complainant was a contributing factor  
21 in the adverse action alleged in the complaint. A de-  
22 cision or order that is favorable to the complainant  
23 shall not be issued pursuant to this subsection if the  
24 respondent demonstrates by clear and convincing

1 evidence that the respondent would have taken the  
2 same adverse action in the absence of such conduct.

3 “(6) ATTORNEYS’ FEES.—Whenever an order is  
4 issued sustaining the complainant’s charges under  
5 this subsection, a sum equal to the aggregate  
6 amount of all costs and expenses, including attor-  
7 ney’s fees, as determined by the Commission to have  
8 been reasonably incurred by the complainant for, or  
9 in connection with, the institution and prosecution of  
10 such proceedings shall be assessed against the per-  
11 son committing such violation. The Commission  
12 shall determine whether such costs and expenses  
13 were reasonably incurred by the complainant without  
14 reference to whether the Secretary also participated  
15 in the proceeding.

16 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-  
17 VIEW.—Proceedings under this subsection shall be  
18 expedited by the Secretary and the Commission. Any  
19 order issued by the Commission under this sub-  
20 section shall be subject to judicial review in accord-  
21 ance with section 106. Violations by any person of  
22 paragraph (1) shall be subject to the provisions of  
23 sections 108 and 110(a)(4).

24 “(8) PROCEDURAL RIGHTS.—The rights and  
25 remedies provided for in this subsection may not be

1 waived by any agreement, policy, form, or condition  
 2 of employment, including by any pre-dispute arbitra-  
 3 tion agreement or collective bargaining agreement.

4 “(9) SAVINGS.—Nothing in this subsection shall  
 5 be construed to diminish the rights, privileges, or  
 6 remedies of any individual who exercises rights  
 7 under any Federal or State law or common law, or  
 8 under any collective bargaining agreement.”.

9 **SEC. 402. PROTECTION FROM LOSS OF PAY.**

10 Section 111 (30 U.S.C. 821) is amended to read as  
 11 follows:

12 **“SEC. 111. ENTITLEMENT OF MINERS.**

13 **“(a) PROTECTION FROM LOSS OF PAY.—**

14 **“(1) WITHDRAWAL ORDERS.—**

15 **“(A) SHIFTS AT TIME OF ORDER.—**If a  
 16 coal or other mine, or an area of such mine, is  
 17 closed by an order issued under section 103,  
 18 104, 107, 108, or 110, all miners working dur-  
 19 ing the shift when such order was issued who  
 20 are idled by such order shall be entitled, regard-  
 21 less of the result of any review of such order,  
 22 to full compensation by the operator at their  
 23 regular rates of pay for the period during which  
 24 they are so idled, but for not more than the bal-  
 25 ance of such shift.

1           “(B) SUBSEQUENT SHIFTS.—If such order  
 2           is not terminated prior to the working shift suc-  
 3           ceeding the shift described in subparagraph  
 4           (A), all miners assigned to such succeeding  
 5           shift who are idled by such order shall be enti-  
 6           tled to compensation by the operator at their  
 7           regular rates of pay for the period during which  
 8           they are so idled, but not for more than one  
 9           half of the hours of such shift, or 4 hours of  
 10          such shift, whichever is greater.

11          “(C) EXTENDED CLOSURES.—If a coal or  
 12          other mine, or an area of such mine, is closed  
 13          by an order issued under section 103, 104, 107,  
 14          108, or 110, all miners who are idled by such  
 15          order, for a shift succeeding the shift described  
 16          in subparagraph (B), shall be entitled, regard-  
 17          less of the result of any review of such order,  
 18          to full compensation by the operator at their  
 19          regular rates of pay and in accordance with  
 20          their regular schedules of pay for the period for  
 21          which they are idled, but not for more than 60  
 22          days.

23          “(2) CLOSURE IN ADVANCE OF ORDER.—

24                 “(A) IN GENERAL.—If the Secretary deter-  
 25          mines that a coal or other mine, or an area of



1           such mine, was closed by the operator in antici-  
2           pation of the issuance of an order described in  
3           paragraph (1), all miners who are idled by such  
4           closure shall be entitled, subject to subpara-  
5           graph (B), to full compensation by the operator  
6           at their regular rates of pay and in accordance  
7           with their regular schedules of pay, from the  
8           time of such closure until such time as the Sec-  
9           retary authorizes reopening of such mine or  
10          such area, but not for more than 60 days.

11           “(B) EXCEPTION.—The entitlement under  
12          subparagraph (A) shall not apply if an operator  
13          promptly withdraws miners upon discovery of a  
14          hazard and notifies the Secretary, where re-  
15          quired and within the prescribed time period.

16           “(3) REFUSAL TO COMPLY.—Whenever an op-  
17          erator violates or fails or refuses to comply with any  
18          order issued under section 103, 104, 107, 108, or  
19          110, all miners employed at the affected mine who  
20          would have been withdrawn from, or prevented from  
21          entering, such mine or area thereof as a result of  
22          such order shall be entitled to full compensation by  
23          the operator at their regular rates of pay, in addi-  
24          tion to pay received for work performed after such  
25          order was issued, for the period beginning when

1       such order was issued and ending when such order  
2       is complied with, vacated, or terminated.

3       “(b) ENFORCEMENT.—

4               “(1) COMMISSION ORDERS.—The Commission  
5       shall have authority to order compensation due  
6       under this section upon the filing of a complaint by  
7       a miner or his representative and after opportunity  
8       for hearing on the record subject to section 554 of  
9       title 5, United States Code. Whenever the Commis-  
10      sion issues an order sustaining the complaint under  
11      this subsection in whole or in part, the Commission  
12      shall award the complainant reasonable attorneys’  
13      fees and costs.

14       “(2) FAILURE TO PAY COMPENSATION DUE.—

15      Consistent with the authority of the Secretary to  
16      order miners withdrawn from a mine under this Act,  
17      the Secretary shall order a mine that has been sub-  
18      ject to a withdrawal order under section 103, 104,  
19      107, 108, or 110, and has reopened, to be closed  
20      again if compensation in accordance with the provi-  
21      sions of this section is not paid by the end of the  
22      next regularly scheduled payroll period following the  
23      lifting of a withdrawal order.

24       “(c) EXPEDITED REVIEW.—If an order is issued that  
25      results in a payment to a miner under subsection (a), the

1 operator shall have the right to an expedited review before  
 2 the Commission in the same manner as the procedure  
 3 under section 316(b)(2)(G)(ii) (including the deadlines  
 4 under such section).”.

5 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**  
 6 **STANDARD FOR MINES WITH PATTERNS OF**  
 7 **VIOLATIONS.**

8 Title I (30 U.S.C. 811 et seq.) is further amended  
 9 by adding at the end the following:

10 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**  
 11 **STANDARD FOR MINES WITH PATTERNS OF**  
 12 **VIOLATIONS.**

13 “(a) IN GENERAL.—For the purpose of ensuring the  
 14 health and safety of miners and the right of miners to  
 15 raise health or safety concerns, an operator of an under-  
 16 ground coal mine who has received notice of a pattern of  
 17 violations under section 104(e) in such mine, for 3 years  
 18 after receipt of such notice, may not discharge or con-  
 19 structively discharge a miner employed at such mine with-  
 20 out reasonable grounds based on a failure of such miner  
 21 to satisfactorily perform the duties required for work as  
 22 a miner, including compliance with the provisions of this  
 23 Act, regulations promulgated under this Act, mandatory  
 24 health or safety standards under any other law, or any  
 25 other legitimate business reason, if—

1           “(1) the miner is paid on an hourly basis; and

2           “(2) the miner has completed the employer’s  
3       probationary period, which in no case shall exceed 6  
4       months.

5       “(b) CAUSE OF ACTION.—A miner aggrieved by a  
6       violation of subsection (a) may file a complaint in the  
7       United States district court in the district where the mine  
8       is located not later than 1 year after such violation.

9       “(c) REMEDIES.—For a miner who prevails under  
10      subsection (b), the appropriate United States district  
11      court shall provide remedies to further the objectives of  
12      this Act, which may include reinstatement of such miner  
13      to the former position of such miner with back pay and  
14      compensatory damages. Such remedies shall include rea-  
15      sonable attorneys’ fees and costs.

16      “(d) PRE-DISPUTE WAIVER PROHIBITED.—The  
17      right of a miner to a cause of action under this section  
18      may not be waived with respect to any dispute that has  
19      not arisen as of the time of the waiver.

20      “(e) CONSTRUCTION.—Nothing in this section shall  
21      be construed to limit the availability of rights and rem-  
22      edies of miners under any other State or Federal law or  
23      a collective bargaining agreement.”.

1 **TITLE** **V—MODERNIZING**  
 2 **HEALTH AND SAFETY STAND-**  
 3 **ARDS**

4 **SEC. 501. PRE-SHIFT REVIEW OF MINE CONDITIONS.**

5 Section 303(d) (30 U.S.C. 863(d)) is amended by  
 6 adding at the end the following:

7 “(3)(A) Not later than 30 days after the issuance of  
 8 the interim final rules promulgated under subparagraph  
 9 (B), each operator of an underground coal mine shall im-  
 10 plement a communication program at the underground  
 11 coal mine to ensure that each miner (prior to traveling  
 12 to or arriving at the work area of such miner and com-  
 13 mencing the assigned tasks of such miner) is orally briefed  
 14 on and made aware of—

15 “(i) any conditions that are hazardous, or that  
 16 violate a mandatory health or safety standard or a  
 17 plan approved under this Act, where the miner is ex-  
 18 pected to work or travel; and

19 “(ii) the general conditions of that miner’s as-  
 20 signed working section or other area where the  
 21 miner is expected to work or travel.

22 “(B) Not later than 180 days after the date of enact-  
 23 ment of the Robert C. Byrd Mine Safety Protection Act  
 24 of 2015, the Secretary shall promulgate interim final rules  
 25 implementing the requirements of subparagraph (A).

1       “(C) Not later than 2 years after the promulgation  
 2 of the interim final rules under subparagraph (B), the  
 3 Secretary shall issue a final rule implementing the require-  
 4 ments of subparagraph (A).”.

5 **SEC. 502. ROCK DUST STANDARDS.**

6       (a) STANDARDS.—Section 304(d) (30 U.S.C. 864(d))  
 7 is amended—

8           (1) by striking “Where rock” and inserting the  
 9 following: “ROCK DUST.—

10           “(1) IN GENERAL.—Where rock”;

11           (2) by striking “65 per centum” and all that  
 12 follows and inserting “80 percent. Where methane is  
 13 present in any ventilating current, the percentage of  
 14 incombustible content of such combined dusts shall  
 15 be increased 0.4 percent for each 0.1 percent of  
 16 methane.”; and

17           (3) by adding at the end the following:

18           “(2) METHODS OF MEASUREMENT.—

19           “(A) IN GENERAL.—Each operator of an  
 20 underground coal mine shall take accurate and  
 21 representative samples that shall measure the  
 22 total incombustible content of combined coal  
 23 dust, rock dust, and other dust in such mine to  
 24 ensure that the coal dust is kept below explosive

1 levels through the appropriate application of  
2 rock dust.

3 “(B) DIRECT READING MONITORS.—In  
4 order to ensure timely assessment and compli-  
5 ance, the Secretary shall, not later than 180  
6 days after the date of enactment of the Robert  
7 C. Byrd Mine Safety Protection Act of 2015,  
8 require operators to measure total incombus-  
9 tible content (or an equivalent measure of  
10 explosibility) in samples of combined coal dust,  
11 rock dust, and other dust, using direct reading  
12 monitors that the Secretary has approved for  
13 use in an underground coal mine, such as coal  
14 dust explosibility monitors.

15 “(C) REGULATIONS.—The Secretary shall,  
16 not later than 180 days after the date of enact-  
17 ment of the Robert C. Byrd Mine Safety Pro-  
18 tection Act of 2015, promulgate an interim  
19 final rule that prescribes methods for operator  
20 sampling of total incombustible content (or an  
21 equivalent measure of explosibility) in samples  
22 of combined coal dust, rock dust, and other  
23 dust using direct reading monitors and that in-  
24 cludes requirements for locations, methods, and  
25 intervals for mandatory operator sampling.

1           “(D) RECOMMENDATIONS.—Not later than  
2           1 year after the date of enactment of the Rob-  
3           ert C. Byrd Mine Safety Protection Act of  
4           2015, the Secretary of Health and Human  
5           Services shall, based upon the latest research,  
6           recommend to the Secretary of Labor any revi-  
7           sions to the mandatory operator sampling loca-  
8           tions, methods, and intervals included in the in-  
9           terim final rule described in subparagraph (C)  
10          that may be warranted in light of such re-  
11          search.

12          “(3) LIMITATION.—Until the Secretary promul-  
13          gates a final rule under paragraph (4)(B), any  
14          measurement taken by a direct reading monitor de-  
15          scribed in paragraph (2)(B) shall not be admissible  
16          to establish a violation in an enforcement action  
17          under this Act.

18          “(4) REPORT AND RULEMAKING AUTHORITY.—

19               “(A) REPORT.—Not later than 2 years  
20               after the date of enactment of the Robert C.  
21               Byrd Mine Safety Protection Act of 2015, the  
22               Secretary of Health and Human Services, in  
23               consultation with the Secretary of Labor, shall  
24               prepare and submit, to the Committee on Edu-  
25               cation and the Workforce of the House of Rep-



1           representatives and the Committee on Health,  
2           Education, Labor, and Pensions of the Senate,  
3           a report—

4                   “(i) regarding whether any direct  
5           reading monitor described in paragraph  
6           (2)(B) is sufficiently reliable and accurate  
7           for the enforcement of the mandatory  
8           health or safety standards by the Secretary  
9           of Labor under such Act, and whether ad-  
10          ditional improvement to such direct read-  
11          ing monitor, or additional verification re-  
12          garding reliability and accuracy, would be  
13          needed for enforcement purposes; and

14                   “(ii) identifying any limitations or im-  
15          pediments for such use in underground  
16          coal mines.

17                   “(B) AUTHORITY.—If the Secretary deter-  
18          mines, following a report under subparagraph  
19          (A) (or an update to such report), that any di-  
20          rect reading monitor described in paragraph  
21          (2)(B) is sufficiently reliable and accurate for  
22          the enforcement of mandatory health or safety  
23          standards under this Act, the Secretary shall,  
24          after the submission of such report or update,  
25          promulgate a final rule authorizing the use of

1           such direct reading monitor for purposes of  
 2           compliance with, and enforcement of, such  
 3           standards and authorizing the use of other  
 4           methods for determining total incombustible  
 5           content. Such final rule shall specify mandatory  
 6           operator sampling locations, methods, and in-  
 7           tervals.”.

8           (b) ROCK DUST RECORDKEEPING.—Section 304 (30  
 9 U.S.C. 864) is further amended—

10           (1) by redesignating subsection (e) as sub-  
 11           section (f);

12           (2) by inserting after subsection (d) the fol-  
 13           lowing:

14           “(e) ROCK DUST RECORDKEEPING.—The operator of  
 15 each coal mine shall maintain and continuously update a  
 16 record of the amount of rock dust purchased for each such  
 17 mine.”; and

18           (3) in subsection (f), as so redesignated, by  
 19           striking “Subsection (b) through (d)” and inserting  
 20           “Subsections (b) through (e)”.

21 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

22           Section 317 (30 U.S.C. 877) is amended by adding  
 23 at the end the following:

24           “(u) ATMOSPHERIC MONITORING SYSTEMS.—

1           “(1) GENERAL REGULATIONS.—Not later than  
2           1 year after the date of enactment of the Robert C.  
3           Byrd Mine Safety Protection Act of 2015, the Sec-  
4           retary shall, following consultation with the Director  
5           of the National Institute for Occupational Safety  
6           and Health, promulgate regulations requiring that  
7           each operator of an underground coal mine install  
8           atmospheric monitoring systems that—

9                   “(A) protect miners where the miners nor-  
10                  mally work and travel;

11                  “(B) assist in mine emergency response  
12                  and the conduct of accident investigations;

13                  “(C) provide real-time information regard-  
14                  ing methane, oxygen, and carbon monoxide lev-  
15                  els, and airflow direction, as appropriate, with  
16                  sensing, annunciating, and recording capabili-  
17                  ties; and

18                  “(D) can, to the maximum extent prac-  
19                  ticable, withstand explosions and fires.

20           “(2) ADDITIONAL REGULATIONS.—The regula-  
21           tions promulgated under paragraph (1) shall, if de-  
22           termined appropriate after an evaluation by the Sec-  
23           retary, include—

1           “(A) the installation of atmospheric moni-  
2           toring and recording devices for mining equip-  
3           ment;

4           “(B) the implementation of redundant sys-  
5           tems, such as the bundle tubing system, that  
6           can continuously monitor the mine atmosphere  
7           following incidents such as fires, explosions, en-  
8           trapments, and inundations; and

9           “(C) the implementation of other tech-  
10          nologies available to conduct continuous atmos-  
11          pheric monitoring.”.

12 **SEC. 504. STUDY ON RESPIRABLE DUST STANDARDS.**

13       (a) STUDY.—Beginning on February 1, 2017, the  
14 Secretary of Labor shall undertake a retrospective study  
15 on the effectiveness of the final rule of the Department  
16 of Labor entitled “Lowering Miners’ Exposure to Res-  
17 pirable Coal Mine Dust, Including Continuous Personal  
18 Dust Monitors”, published at 79 Fed. Reg. 24814 (May  
19 1, 2014), and evaluate the data regarding the use of con-  
20 tinuous personal dust monitors, to determine whether—

21           (1) the 1.5 mg/m<sup>3</sup> respirable dust standard that  
22           was included in such final rule should be further  
23           lowered to better protect the health of miners;

24           (2) the frequency of sampling continuous per-  
25           sonal dust monitors should be increased;

1           (3) engineering controls and work practices  
2       used by mine operators to achieve and maintain the  
3       required respirable coal mine dust levels should be  
4       modified; and

5           (4) samples taken on shifts longer than 8 hours  
6       should be converted to an 8-hour equivalent con-  
7       centration to protect miners who work longer shifts.

8       (b) REPORT.—

9           (1) INITIAL REPORT.—Upon beginning the  
10      study under subsection (a), the Secretary of Labor  
11      shall transmit a copy of such study to Congress, no-  
12      tifying Congress that such study has commenced.

13          (2) ANNUAL REPORTS.—For each year after  
14      the commencement of the study under subsection (a)  
15      and until such study is completed, the Secretary of  
16      Labor shall transmit a report to Congress on the  
17      progress of such study.

18          (3) FINAL REPORT.—Upon completion of the  
19      study under subsection (a), the Secretary of Labor  
20      shall submit a final report of such study to Con-  
21      gress.

22   **SEC. 505. REFRESHER TRAINING ON MINERS' RIGHTS AND**  
23                   **RESPONSIBILITIES.**

24          (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.  
25   825(a)(3)) is amended to read as follows:

1           “(3) all miners shall receive no less than 9  
2           hours of refresher training, no less frequently than  
3           once every 12 months. Such training shall include  
4           one hour of training on the statutory rights and re-  
5           sponsibilities of miners and their representatives  
6           under this Act, and other applicable Federal and  
7           State law, and shall be through a program of in-  
8           struction developed by the Secretary and delivered  
9           by an employee of the Administration (or a trainer  
10          approved by the Administration) that is a party  
11          independent from the operator;”.

12          (b) NATIONAL HAZARD REPORTING HOTLINE.—Sec-  
13          tion 115 (30 U.S.C. 825), as so amended, is further  
14          amended—

15               (1) by redesignating subsections (c) through (e)  
16               as subsections (d) through (f), respectively; and

17               (2) by inserting after subsection (b) the fol-  
18               lowing:

19           “(c) Any health and safety training program of in-  
20          struction provided under this section shall include dis-  
21          tribution to miners of information regarding the rights of  
22          such miners under this Act and a toll-free hotline tele-  
23          phone number, which the Secretary shall maintain to re-  
24          ceive complaints from miners and the public regarding  
25          hazardous conditions, discrimination, safety or health vio-

lations, or other mine safety or health concerns. Information regarding such hotline shall be provided in a portable, convenient format, such as a durable wallet card, to enable miners to keep such information on their person.”.

(c) TIMING OF INITIAL STATUTORY RIGHTS TRAINING.—Notwithstanding section 115 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 825) (as so amended) or the health and safety training program approved under such section, an operator shall ensure that all miners already employed by the operator on the date of enactment of this Act shall receive the one hour of statutory rights and responsibilities training described in section 115(a)(3) of such Act, not later than 180 days after such date.

**SEC. 506. AUTHORITY TO MANDATE ADDITIONAL TRAINING.**

(a) IN GENERAL.—Section 115 (30 U.S.C. 825), as so amended, is further amended—

(1) by redesignating subsections (e) and (f) (as so redesignated) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) (as so redesignated) the following:

“(e) AUTHORITY TO MANDATE ADDITIONAL TRAINING.—

1           “(1) IN GENERAL.—The Secretary is authorized  
2           to issue an order requiring that an operator of a  
3           coal or other mine provide additional training be-  
4           yond what is otherwise required by law, and speci-  
5           fying the time within which such training shall be  
6           provided, if the Secretary finds that—

7                   “(A)(i) a serious or fatal accident has oc-  
8                   curred at such mine;

9                   “(ii) such mine has experienced accident  
10                  and injury rates, citations for violations of this  
11                  Act (including mandatory health or safety  
12                  standards or regulations promulgated under  
13                  this Act), citations for significant and substan-  
14                  tial violations, or withdrawal orders issued  
15                  under this Act, at a rate above the average for  
16                  mines of similar size and type; or

17                  “(iii) an operator has a history of failing to  
18                  adequately train miners, as required by this Act  
19                  or the regulations promulgated under this Act;  
20                  and

21                  “(B) additional training would benefit the  
22                  health or safety of miners at the mine.

23           “(2) WITHDRAWAL ORDER.—If the operator  
24           fails to provide training ordered under paragraph  
25           (1) within the specified time provided by the Sec-



1       retary under such paragraph, the Secretary shall  
 2       issue an order requiring such operator to cause all  
 3       affected persons, except persons referred to in sec-  
 4       tion 104(c), to be withdrawn, and to be prohibited  
 5       from entering such mine, until such operator has  
 6       provided such training.”.

7       (b) CONFORMING AMENDMENTS.—Section 104(g)(2)  
 8       (30 U.S.C. 814(g)(2)) is amended by striking “under  
 9       paragraph (1)” both places it appears and inserting  
 10      “under paragraph (1) or under section 115(e)”.

11      **SEC. 507. BROOKWOOD-SAGO MINE SAFETY GRANTS.**

12       Section 14(e)(2) of the Mine Improvement and New  
 13      Emergency Response Act of 2006 (30 U.S.C. 965(e)(2))  
 14      is amended by inserting before the period “, and under-  
 15      ground mine rescue training activities that simulate mine  
 16      accident conditions”.

17      **SEC. 508. CERTIFICATION OF PERSONNEL.**

18       (a) IN GENERAL.—Title I (30 U.S.C. 811 et seq.),  
 19      as so amended, is further amended by adding at the end  
 20      the following:

21      **“SEC. 118. CERTIFICATION OF PERSONNEL.**

22       “(a) CERTIFICATION REQUIRED.—Any person who is  
 23      authorized or designated by the operator of a coal or other  
 24      mine to perform any duties or provide any training that  
 25      this Act, including a mandatory health or safety standard

1 or regulation promulgated pursuant to this Act, requires  
 2 to be performed or provided by a certified, registered,  
 3 qualified, or otherwise approved person, shall be permitted  
 4 to perform such duties or provide such training only if  
 5 such person has a current certification, registration, quali-  
 6 fication, or other approval to perform such duties or pro-  
 7 vide such training consistent with the requirements of this  
 8 section.

9 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-  
 10 MENTS AND PROCEDURES.—

11 “(1) IN GENERAL.—Not later than 1 year after  
 12 the date of enactment of the Robert C. Byrd Mine  
 13 Safety Protection Act of 2015, the Secretary shall  
 14 issue mandatory standards to establish—

15 “(A) requirements for the certification,  
 16 registration, qualification, or other approval de-  
 17 scribed in subsection (a), including the experi-  
 18 ence, examinations, and references that may be  
 19 required as appropriate;

20 “(B) time limits for such certification, reg-  
 21 istration, qualification, or other approval, and  
 22 procedures for obtaining and renewing such cer-  
 23 tification, registration, qualification, or other  
 24 approval; and

1           “(C) procedures and criteria for revoking  
 2           such certification, registration, qualification, or  
 3           other approval, including procedures that en-  
 4           sure that—

5                 “(i) the Secretary (or a State agency,  
 6                 as applicable) responds to requests for rev-  
 7                 ocation; and

8                 “(ii) the names of individuals, whose  
 9                 certification, registration, qualification, or  
 10                other approval has been revoked, are pro-  
 11                vided to and maintained by the Secretary,  
 12                and are made available to appropriate  
 13                State agencies through an electronic data-  
 14                base.

15           “(2) COORDINATION WITH STATES.—In devel-  
 16           oping the standards required under paragraph (1),  
 17           the Secretary shall consult with States that have  
 18           miner certification programs to ensure effective co-  
 19           ordination with existing State standards and re-  
 20           quirements for certification. The standards required  
 21           under paragraph (1) shall provide that the certifi-  
 22           cation, registration, qualification, or other approval  
 23           of the State in which the coal or other mine is lo-  
 24           cated satisfies the requirement of subsection (a) if  
 25           the State’s program of certification, registration,

1 qualification, or other approval is no less stringent  
2 than the standards established by the Secretary  
3 under paragraph (1).

4 “(c) OPERATOR FEES FOR CERTIFICATION.—

5 “(1) ASSESSMENT AND COLLECTION.—Begin-  
6 ning 180 days after the date of enactment of the  
7 Robert C. Byrd Mine Safety Protection Act of 2015,  
8 the Secretary shall assess and collect fees, in accord-  
9 ance with this subsection, from each operator for  
10 each person certified under this section. Fees shall  
11 be assessed and collected in amounts determined by  
12 the Secretary as necessary to fund certification pro-  
13 grams that meet the standards established under  
14 this section.

15 “(2) USE.—Amounts collected under paragraph  
16 (1) shall only be available to the Secretary, in ac-  
17 cordance with paragraph (3), for making expendi-  
18 tures to carry out the certification programs estab-  
19 lished under this section.

20 “(3) AUTHORIZATION OF APPROPRIATIONS.—In  
21 addition to funds authorized to be appropriated  
22 under section 114, there is authorized to be appro-  
23 priated to the Secretary for each fiscal year in which  
24 fees are collected under paragraph (1) an amount  
25 equal to the total amount of fees collected under

1 paragraph (1) during that fiscal year. Such amounts  
2 are authorized to remain available until expended. If  
3 on the first day of a fiscal year a regular appropria-  
4 tion to the Administration has not been enacted, the  
5 Administration shall continue to collect fees (as off-  
6 setting collections) under this subsection at the rate  
7 in effect during the preceding fiscal year, until 5  
8 days after the date on which such regular appropria-  
9 tion is enacted.

10 “(4) COLLECTING AND CREDITING OF FEES.—

11 Fees authorized and collected under this subsection  
12 shall be deposited and credited as offsetting collec-  
13 tions to the account providing appropriations to the  
14 Administration and shall not be collected for any fis-  
15 cal year except to the extent and in the amount pro-  
16 vided in advance in appropriation Acts.

17 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-  
18 ator who permits a person to perform any of the health  
19 or safety related functions described in subsection (a)  
20 without a current certification, registration, qualification,  
21 or other approval that meets the requirements of this sec-  
22 tion shall be considered to have committed an unwarrant-  
23 able failure under section 104(d)(1), and the Secretary  
24 shall issue an order requiring that such person be with-

1 drawn or reassigned to duties that do not require such  
2 certification.”.

3 (b) CONFORMING AMENDMENTS.—Section 318 (30  
4 U.S.C. 878) is amended—

5 (1) by striking subsections (a) and (b);

6 (2) in subsection (c), by redesignating para-  
7 graphs (1) through (3) as subparagraphs (A)  
8 through (C), respectively;

9 (3) in subsection (g), by redesignating para-  
10 graphs (1) through (4) as subparagraphs (A)  
11 through (D), respectively; and

12 (4) by redesignating subsections (e) through (l)  
13 as paragraphs (1) through (10), respectively.

14 **SEC. 509. ELECTRONIC RECORDS REQUIREMENT.**

15 Section 103 (30 U.S.C. 802) is amended by adding  
16 at the end the following:

17 “(l) ELECTRONIC RECORDS.—Not later than 180  
18 days after the date of enactment of the Robert C. Byrd  
19 Mine Safety Protection Act of 2015, the Secretary shall  
20 promulgate regulations requiring that mine operators re-  
21 tain records and data required by this Act, or otherwise  
22 required by the Secretary, that are created, stored, or  
23 transmitted in electronic form. Such records shall include  
24 records pertaining to miner safety and health, tracking  
25 and communications, atmospheric monitoring of methane,

1 carbon monoxide, oxygen, coal dust and other mine condi-  
 2 tions, equipment usage history and operating parameters,  
 3 equipment calibration and maintenance, and other infor-  
 4 mation relevant to compliance with Federal mine health  
 5 or safety laws and regulations. Not later than 2 years  
 6 after the date of enactment of such Act, the Secretary  
 7 shall promulgate a regulation regarding the minimum nec-  
 8 essary capabilities of equipment to retain, store, and re-  
 9 cover data created or transmitted in electronic form.”.

## 10 **TITLE VI—ADDITIONAL MINE** 11 **SAFETY PROVISIONS**

### 12 **SEC. 601. DEFINITIONS.**

13 (a) DEFINITION OF OPERATOR.—Section 3(d) (30  
 14 U.S.C. 802(d)) is amended to read as follows:

15 “(d) ‘operator’ means—

16 “(1) any owner, lessee, or other person  
 17 that—

18 “(A) operates or supervises a coal or  
 19 other mine; or

20 “(B) controls such mine by making or  
 21 having the authority to make management  
 22 or operational decisions that affect, directly  
 23 or indirectly, the health or safety at such  
 24 mine; or

1                   “(2) any independent contractor per-  
2                   forming services or construction at such mine;”.

3           (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.  
4 802(e)) is amended by striking “the miners” and inserting  
5 “any miner”.

6           (c) DEFINITION OF IMMINENT DANGER.—Section  
7 3(j) (30 U.S.C. 802(j)) is amended—

8                   (1) by striking “means the” and inserting  
9                   “means—

10                   “(1) the”;

11                   (2) by striking the semicolon at the end and in-  
12                   serting “; or”; and

13                   (3) by adding at the end the following:

14                   “(2) the existence of multiple conditions or  
15                   practices (regardless of whether related to each  
16                   other) that, when considered in the aggregate, could  
17                   reasonably be expected to cause death or serious  
18                   physical harm before such conditions or practices  
19                   can be abated;”.

20           (d) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.  
21 802(g)) is amended by inserting after “or other mine” the  
22 following: “, and includes any individual who is not cur-  
23 rently working in a coal or other mine but would be cur-  
24 rently working in such mine, but for an accident in such  
25 mine”.



1 (e) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL  
 2 VIOLATIONS.—Section 3 (30 U.S.C. 802), as so amended,  
 3 is further amended—

4 (1) in subsection (m), by striking “and” after  
 5 the semicolon;

6 (2) in subsection (n), by striking the period at  
 7 the end and inserting a semicolon;

8 (3) in subsection (o), by striking the period at  
 9 the end and inserting “; and”; and

10 (4) by adding at the end the following:

11 “(p) ‘significant and substantial violation’  
 12 means a violation of this Act, including any manda-  
 13 tory health or safety standard or regulation promul-  
 14 gated under this Act, that is of such nature as could  
 15 significantly and substantially contribute to the  
 16 cause and effect of a coal or other mine safety or  
 17 health hazard as described in section 104(d).”.

18 **SEC. 602. ASSISTANCE TO STATES.**

19 Section 503 (30 U.S.C. 953(a)) is amended—

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph (1),  
 22 by striking “, in coordination with the Sec-  
 23 retary of Health, Education, and Welfare and  
 24 the Secretary of the Interior,”;

1 (B) in paragraph (2), by striking “and”  
 2 after the semicolon;

3 (C) in paragraph (3), by striking the pe-  
 4 riod and inserting “; and”; and

5 (D) by adding at the end the following:

6 “(4) to assist such State in developing and im-  
 7 plementing any certification program for coal or  
 8 other mines required for compliance with section  
 9 118.”; and

10 (2) in subsection (h), by striking “\$3,000,000  
 11 for fiscal year 1970, and \$10,000,000 annually in  
 12 each succeeding fiscal year” and inserting  
 13 “\$20,000,000 for each fiscal year”.

14 **SEC. 603. AUTHORIZATION OF COOPERATIVE AGREEMENTS**

15 **BY NIOSH OFFICE OF MINE SAFETY AND**  
 16 **HEALTH.**

17 Section 22(h)(3) of the Occupational Safety and  
 18 Health Act of 1970 (29 U.S.C. 671(h)(3)) is amended—

19 (1) in subparagraph (B), by striking “and” at  
 20 the end;

21 (2) by redesignating subparagraph (C) as sub-  
 22 paragraph (D); and

23 (3) by inserting after subparagraph (B) the fol-  
 24 lowing:

1           “(C) enter into cooperative agreements or  
 2           contracts with international institutions and  
 3           private entities to improve mine safety and  
 4           health through the development and evaluation  
 5           of new interventions; and”.

6 **SEC. 604. DOUBLE ENCUMBRANCE; SUCCESSION PLAN.**

7           (a) **AUTHORIZATION.**—Notwithstanding any per-  
 8           sonnel procedures, rules, or guidance, the Secretary of  
 9           Labor is authorized to double encumber a position or uti-  
 10          lize early replacement hiring for authorized representa-  
 11          tives and technical specialist positions in the Mine Safety  
 12          and Health Administration. The number of such positions  
 13          shall be consistent with the staffing requirements set forth  
 14          in the succession plan under subsection (b).

15          (b) **SUCCESSION PLAN.**—

16               (1) **IN GENERAL.**—Not later than 90 days after  
 17          the date of enactment of this Act, the Secretary of  
 18          Labor shall develop and provide to Congress a suc-  
 19          cession plan for the Mine Safety and Health Admin-  
 20          istration for the next 5 years to assure timely re-  
 21          placement of qualified employees critical to main-  
 22          taining the agency’s mission.

23               (2) **CONTENTS OF PLAN.**—The succession plan  
 24          developed under this subsection shall—

1 (A) estimate employee turnover for each  
2 year;

3 (B) set benchmarks for maximum allow-  
4 able percentage of vacancies, and a maximum  
5 ratio of trainees to authorized representatives;

6 (C) utilize double encumbrance or early re-  
7 placement hiring for authorized representatives  
8 and technical specialists;

9 (D) implement tracking systems to assure  
10 that staffing levels of authorized representatives  
11 and technical specialists do not fall below the  
12 minimum required to conduct necessary inspec-  
13 tions, thoroughly review mine plans, and con-  
14 duct accident and special investigations; and

15 (E) identify resources necessary to imple-  
16 ment such plan.

17 (3) UPDATES TO PLAN.—The succession plan  
18 under this subsection shall be updated biennially.

19 **TITLE VII—AMENDMENTS TO**  
20 **THE OCCUPATIONAL SAFETY**  
21 **AND HEALTH ACT OF 1970**

22 **SEC. 701. COVERAGE OF PUBLIC EMPLOYEES.**

23 (a) IN GENERAL.—Section 3(5) of the Occupational  
24 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is  
25 amended by striking “but does not include” and all that

1 follows through the period at the end and inserting “in-  
 2 cluding the United States, a State, or a political subdivi-  
 3 sion of a State.”.

4 (b) CONSTRUCTION.—Nothing in this Act, or the  
 5 amendments made by this Act, shall be construed to affect  
 6 the application of section 18 of the Occupational Safety  
 7 and Health Act of 1970 (29 U.S.C. 667).

8 **SEC. 702. ENHANCED PROTECTIONS FROM RETALIATION.**

9 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the  
 10 Occupational Safety and Health Act of 1970 (29 U.S.C.  
 11 660(c)(1)) is amended—

12 (1) by striking “discharge” and all that follows  
 13 through “because such” and inserting the following:  
 14 “discharge or cause to be discharged, or in any man-  
 15 ner discriminate against or cause to be discriminated  
 16 against, any employee because—

17 “(A) such”;

18 (2) by striking “this Act or has” and inserting  
 19 the following: “this Act;

20 “(B) such employee has”;

21 (3) by striking “such proceeding or because of  
 22 the exercise” and inserting the following: “before  
 23 Congress or in any Federal or State proceeding re-  
 24 lated to safety or health;

1           “(C) such employee has refused to violate any  
2           provision of this Act; or

3           “(D) of the exercise”; and

4           (4) by inserting before the period at the end the  
5           following: “, including the reporting of any injury,  
6           illness, or unsafe condition to the employer, agent of  
7           the employer, safety and health committee involved,  
8           or employee safety and health representative in-  
9           volved”.

10          (b) PROHIBITION OF RETALIATION.—Section 11(c)  
11 of such Act (29 U.S.C. 660(c)) is amended by striking  
12 paragraph (2) and inserting the following:

13          “(2)(A) No person shall discharge, or cause to be dis-  
14 charged, or in any manner discriminate against, or cause  
15 to be discriminated against, an employee for refusing to  
16 perform the employee’s duties if the employee has a rea-  
17 sonable apprehension that performing such duties would  
18 result in serious injury to, or serious impairment of the  
19 health of, the employee or other employees.

20          “(B) For purposes of subparagraph (A), the cir-  
21 cumstances causing the employee’s good-faith belief that  
22 performing such duties would pose a safety or health haz-  
23 ard shall be of such a nature that a reasonable person,  
24 under the circumstances confronting the employee, would  
25 conclude that there is such a hazard. In order to qualify

1 for protection under this paragraph, the employee, when  
2 practicable, shall have communicated or attempted to com-  
3 municate the safety or health concern to the employer and  
4 have not received from the employer a response reasonably  
5 calculated to allay such concern.”.

6 (c) PROCEDURE.—Section 11(c) of such Act (29  
7 U.S.C. 660(c)) is amended by striking paragraph (3) and  
8 inserting the following:

9 “(3) COMPLAINT.—Any employee who believes  
10 that the employee has been discharged, disciplined,  
11 or otherwise discriminated against by any person in  
12 violation of paragraph (1) or (2) may seek relief for  
13 such violation by filing a complaint with the Sec-  
14 retary under paragraph (5).

15 “(4) STATUTE OF LIMITATIONS.—

16 “(A) IN GENERAL.—An employee may take  
17 the action permitted by paragraph (3) not later  
18 than 180 days after the later of—

19 “(i) the date on which an alleged vio-  
20 lation of paragraph (1) or (2) occurs; or

21 “(ii) the date on which the employee  
22 knows or should reasonably have known  
23 that such alleged violation occurred.

24 “(B) REPEAT VIOLATION.—Except in  
25 cases when the employee has been discharged,

1 a violation of paragraph (1) or (2) shall be con-  
2 sidered to have occurred on the last date an al-  
3 leged repeat violation occurred.

4 “(5) INVESTIGATION.—

5 “(A) IN GENERAL.—An employee may,  
6 within the time period required under para-  
7 graph (4), file a complaint with the Secretary  
8 alleging a violation of paragraph (1) or (2). If  
9 the complaint alleges a prima facie case, the  
10 Secretary shall conduct an investigation of the  
11 allegations in the complaint, which—

12 “(i) shall include—

13 “(I) interviewing the complain-  
14 ant;

15 “(II) providing the respondent an  
16 opportunity to—

17 “(aa) submit to the Sec-  
18 retary a written response to the  
19 complaint; and

20 “(bb) meet with the Sec-  
21 retary to present statements from  
22 witnesses or provide evidence;  
23 and

24 “(III) providing the complainant  
25 an opportunity to—



1 “(aa) receive any statements  
2 or evidence provided to the Sec-  
3 retary;

4 “(bb) meet with the Sec-  
5 retary; and

6 “(cc) rebut any statements  
7 or evidence; and

8 “(ii) may include issuing subpoenas  
9 for the purposes of such investigation.

10 “(B) DECISION.—Not later than 90 days  
11 after the filing of the complaint, the Secretary  
12 shall—

13 “(i) determine whether reasonable  
14 cause exists to believe that a violation of  
15 paragraph (1) or (2) has occurred; and

16 “(ii) issue a decision granting or de-  
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-  
19 TIGATION.—If, after completion of an investigation  
20 under paragraph (5)(A), the Secretary finds reason-  
21 able cause to believe that a violation of paragraph  
22 (1) or (2) has occurred, the Secretary shall issue a  
23 preliminary order providing relief authorized under  
24 paragraph (14) at the same time the Secretary  
25 issues a decision under paragraph (5)(B). If a de

1        novo hearing is not requested within the time period  
2        required under paragraph (7)(A)(i), such prelimi-  
3        nary order shall be deemed a final order of the Sec-  
4        retary and is not subject to judicial review.

5            “(7) HEARING.—

6                    “(A) REQUEST FOR HEARING.—

7                            “(i) IN GENERAL.—A de novo hearing  
8                            on the record before an administrative law  
9                            judge may be requested—

10                                    “(I) by the complainant or re-  
11                                    spondent within 30 days after receiv-  
12                                    ing notification of a decision granting  
13                                    or denying relief issued under para-  
14                                    graph (5)(D) or paragraph (6) respec-  
15                                    tively;

16                                    “(II) by the complainant within  
17                                    30 days after the date the complaint  
18                                    is dismissed without investigation by  
19                                    the Secretary under paragraph (5)(A);  
20                                    or

21                                    “(III) by the complainant within  
22                                    120 days after the date of filing the  
23                                    complaint, if the Secretary has not  
24                                    issued a decision under paragraph  
25                                    (5)(B).

1           “(ii) REINSTATEMENT ORDER.—The  
2 request for a hearing shall not operate to  
3 stay any preliminary reinstatement order  
4 issued under paragraph (6).

5           “(B) PROCEDURES.—

6           “(i) IN GENERAL.—A hearing re-  
7 quested under this paragraph shall be con-  
8 ducted expeditiously and in accordance  
9 with rules established by the Secretary for  
10 hearings conducted by administrative law  
11 judges.

12           “(ii) SUBPOENAS; PRODUCTION OF  
13 EVIDENCE.—In conducting any such hear-  
14 ing, the administrative law judge may issue  
15 subpoenas. The respondent or complainant  
16 may request the issuance of subpoenas  
17 that require the deposition of, or the at-  
18 tendance and testimony of, witnesses and  
19 the production of any evidence (including  
20 any books, papers, documents, or record-  
21 ings) relating to the matter under consid-  
22 eration.

23           “(iii) DECISION.—The administrative  
24 law judge shall issue a decision not later  
25 than 90 days after the date on which a

1 hearing was requested under this para-  
2 graph and promptly notify, in writing, the  
3 parties and the Secretary of such decision,  
4 including the findings of fact and conclu-  
5 sions of law. If the administrative law  
6 judge finds that a violation of paragraph  
7 (1) or (2) has occurred, the judge shall  
8 issue an order for relief under paragraph  
9 (14). If review under paragraph (8) is not  
10 timely requested, such order shall be  
11 deemed a final order of the Secretary that  
12 is not subject to judicial review.

13 “(8) ADMINISTRATIVE APPEAL.—

14 “(A) IN GENERAL.—Not later than 30  
15 days after the date of notification of a decision  
16 and order issued by an administrative law judge  
17 under paragraph (7), the complainant or re-  
18 spondent may file, with objections, an adminis-  
19 trative appeal with an administrative review  
20 body designated by the Secretary (referred to in  
21 this paragraph as the ‘review board’).

22 “(B) STANDARD OF REVIEW.—In review-  
23 ing the decision and order of the administrative  
24 law judge, the review board shall affirm the de-  
25 cision and order if it is determined that the fac-

1 tual findings set forth therein are supported by  
2 substantial evidence and the decision and order  
3 are made in accordance with applicable law.

4 “(C) DECISIONS.—If the review board  
5 grants an administrative appeal, the review  
6 board shall issue a final decision and order af-  
7 firming or reversing, in whole or in part, the  
8 decision under review by not later than 90 days  
9 after receipt of the administrative appeal. If it  
10 is determined that a violation of paragraph (1)  
11 or (2) has occurred, the review board shall issue  
12 a final decision and order providing relief au-  
13 thorized under paragraph (14). Such decision  
14 and order shall constitute final agency action  
15 with respect to the matter appealed.

16 “(9) SETTLEMENT IN THE ADMINISTRATIVE  
17 PROCESS.—

18 “(A) IN GENERAL.—At any time before  
19 issuance of a final order, an investigation or  
20 proceeding under this subsection may be termi-  
21 nated on the basis of a settlement agreement  
22 entered into by the parties.

23 “(B) PUBLIC POLICY CONSIDERATIONS.—  
24 Neither the Secretary, an administrative law  
25 judge, or review board conducting a hearing

1 under this subsection shall accept a settlement  
2 that contains conditions conflicting with the  
3 rights protected under this Act or that are con-  
4 trary to public policy, including a restriction on  
5 a complainant's right to future employment  
6 with employers other than the specific employ-  
7 ers named in a complaint.

8 “(10) INACTION BY THE REVIEW BOARD OR AD-  
9 MINISTRATIVE LAW JUDGE.—

10 “(A) IN GENERAL.—The complainant may  
11 bring a de novo action described in subpara-  
12 graph (B) if—

13 “(i) an administrative law judge has  
14 not issued a decision and order within the  
15 90-day time period required under para-  
16 graph (7)(B)(iii); or

17 “(ii) the review board has not issued  
18 a decision and order within the 90-day  
19 time period required under paragraph  
20 (8)(C).

21 “(B) DE NOVO ACTION.—Such de novo ac-  
22 tion may be brought at law or equity in the  
23 United States district court for the district  
24 where a violation of paragraph (1) or (2) alleg-  
25 edly occurred or where the complainant resided

1 on the date of such alleged violation. The court  
2 shall have jurisdiction over such action without  
3 regard to the amount in controversy and to  
4 order appropriate relief under paragraph (14).  
5 Such action shall, at the request of either party  
6 to such action, be tried by the court with a  
7 jury.

8 “(11) JUDICIAL REVIEW.—

9 “(A) TIMELY APPEAL TO THE COURT OF  
10 APPEALS.—Any party adversely affected or ag-  
11 grieved by a final decision and order issued  
12 under this subsection may obtain review of such  
13 decision and order in the United States Court  
14 of Appeals for the circuit where the violation,  
15 with respect to which such final decision and  
16 order was issued, allegedly occurred or where  
17 the complainant resided on the date of such al-  
18 leged violation. To obtain such review, a party  
19 shall file a petition for review not later than 60  
20 days after the final decision and order was  
21 issued. Such review shall conform to chapter 7  
22 of title 5, United States Code. The commence-  
23 ment of proceedings under this subparagraph  
24 shall not, unless ordered by the court, operate  
25 as a stay of the final decision and order.

1           “(B) LIMITATION ON COLLATERAL AT-  
 2           TACK.—An order and decision with respect to  
 3           which review may be obtained under subpara-  
 4           graph (A) shall not be subject to judicial review  
 5           in any criminal or other civil proceeding.

6           “(12) ENFORCEMENT OF ORDER.—If a re-  
 7           spondent fails to comply with an order issued under  
 8           this subsection, the Secretary or the complainant on  
 9           whose behalf the order was issued may file a civil ac-  
 10          tion for enforcement in the United States district  
 11          court for the district in which the violation was  
 12          found to occur to enforce such order. If both the  
 13          Secretary and the complainant file such action, the  
 14          action of the Secretary shall take precedence. The  
 15          district court shall have jurisdiction to grant all ap-  
 16          propriate relief described in paragraph (14).

17          “(13) BURDENS OF PROOF.—

18               “(A) CRITERIA FOR DETERMINATION.—In  
 19               making a determination or adjudicating a com-  
 20               plaint pursuant to this subsection, the Sec-  
 21               retary, administrative law judge, review board,  
 22               or a court may determine that a violation of  
 23               paragraph (1) or (2) has occurred only if the  
 24               complainant demonstrates that any conduct de-  
 25               scribed in paragraph (1) or (2) with respect to



1 the complainant was a contributing factor in  
2 the adverse action alleged in the complaint.

3 “(B) PROHIBITION.—Notwithstanding sub-  
4 paragraph (A), a decision or order that is favor-  
5 able to the complainant shall not be issued in  
6 any administrative or judicial action pursuant  
7 to this subsection if the respondent dem-  
8 onstrates by clear and convincing evidence that  
9 the respondent would have taken the same ad-  
10 verse action in the absence of such conduct.

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-  
13 retary, administrative law judge, review board,  
14 or a court determines that a violation of para-  
15 graph (1) or (2) has occurred, the Secretary or  
16 court, respectively, shall have jurisdiction to  
17 order all appropriate relief, including injunctive  
18 relief, compensatory and exemplary damages,  
19 including—

20 “(i) affirmative action to abate the  
21 violation;

22 “(ii) reinstatement without loss of po-  
23 sition or seniority, and restoration of the  
24 terms, rights, conditions, and privileges as-  
25 sociated with the complainant’s employ-

1           ment, including opportunities for pro-  
2           motions to positions with equivalent or bet-  
3           ter compensation for which the complain-  
4           ant is qualified;

5           “(iii) compensatory and consequential  
6           damages sufficient to make the complain-  
7           ant whole (including back pay, prejudg-  
8           ment interest, and other damages); and

9           “(iv) expungement of all warnings,  
10          reprimands, or derogatory references that  
11          have been placed in paper or electronic  
12          records or databases of any type relating  
13          to the actions by the complainant that  
14          gave rise to the unfavorable personnel ac-  
15          tion, and, at the complainant’s direction,  
16          transmission of a copy of the decision on  
17          the complaint to any person whom the  
18          complainant reasonably believes may have  
19          received such unfavorable information.

20          “(B) ATTORNEYS’ FEES AND COSTS.—If  
21          the Secretary or an administrative law judge,  
22          review board, or court grants an order for relief  
23          under subparagraph (A), the Secretary, admin-  
24          istrative law judge, review board, or court, re-

1           spectively, shall assess, at the request of the  
2           employee against the employer—

3                   “(i) reasonable attorneys’ fees; and

4                   “(ii) costs (including expert witness  
5                   fees) reasonably incurred, as determined  
6                   by the Secretary, administrative law judge,  
7                   review board, or court, respectively, in con-  
8                   nection with bringing the complaint upon  
9                   which the order was issued.

10           “(15) PROCEDURAL RIGHTS.—The rights and  
11           remedies provided for in this subsection may not be  
12           waived by any agreement, policy, form, or condition  
13           of employment, including by any pre-dispute arbitra-  
14           tion agreement or collective bargaining agreement.

15           “(16) SAVINGS.—Nothing in this subsection  
16           shall be construed to diminish the rights, privileges,  
17           or remedies of any employee who exercises rights  
18           under any Federal or State law or common law, or  
19           under any collective bargaining agreement.

20           “(17) ELECTION OF VENUE.—

21                   “(A) IN GENERAL.—An employee of an  
22                   employer who is located in a State that has a  
23                   State plan approved under section 18 may file  
24                   a complaint alleging a violation of paragraph  
25                   (1) or (2) by such employer with—

1 “(i) the Secretary under paragraph  
2 (5); or

3 “(ii) a State plan administrator in  
4 such State.

5 “(B) REFERRALS.—If—

6 “(i) the Secretary receives a complaint  
7 pursuant to subparagraph (A)(i), the Sec-  
8 retary shall not refer such complaint to a  
9 State plan administrator for resolution; or

10 “(ii) a State plan administrator re-  
11 ceives a complaint pursuant to subpara-  
12 graph (A)(ii), the State plan administrator  
13 shall not refer such complaint to the Sec-  
14 retary for resolution.”.

15 (d) RELATION TO ENFORCEMENT.—Section 17(j) of  
16 such Act (29 U.S.C. 666(j)) is amended by inserting be-  
17 fore the period the following: “, including the history of  
18 violations under section 11(c)”.

19 **SEC. 703. VICTIMS’ RIGHTS.**

20 The Occupational Safety and Health Act of 1970 (29  
21 U.S.C. 651 et seq.) is amended by inserting after section  
22 9 (29 U.S.C. 658) the following:

23 **“SEC. 9A. VICTIMS’ RIGHTS.**

24 “(a) RIGHTS BEFORE THE SECRETARY.—A victim or  
25 the representative of a victim, shall be afforded the right,

1 with respect to an inspection or investigation conducted  
 2 under section 8 to—

3 “(1) meet with the Secretary regarding the in-  
 4 spection or investigation conducted under such sec-  
 5 tion before the Secretary’s decision to issue a cita-  
 6 tion or take no action;

7 “(2) receive, at no cost, a copy of any citation  
 8 or report, issued as a result of such inspection or in-  
 9 vestigation, at the same time as the employer re-  
 10 ceives such citation or report;

11 “(3) be informed of any notice of contest or ad-  
 12 dition of parties to the proceedings filed under sec-  
 13 tion 10(c); and

14 “(4) be provided notification of the date and  
 15 time or any proceedings, service of pleadings, and  
 16 other relevant documents, and an explanation of the  
 17 rights of the employer, employee and employee rep-  
 18 resentative, and victim to participate in proceedings  
 19 conducted under section 10(c).

20 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-  
 21 quest, a victim or representative of a victim shall be af-  
 22 forded the right with respect to a work-related bodily in-  
 23 jury or death to—

24 “(1) be notified of the time and date of any  
 25 proceeding before the Commission;

1           “(2) receive pleadings and any decisions relat-  
2           ing to the proceedings; and

3           “(3) be provided an opportunity to appear and  
4           make a statement in accordance with the rules pre-  
5           scribed by the Commission.

6           “(c) MODIFICATION OF CITATION.—Before entering  
7           into an agreement to withdraw or modify a citation issued  
8           as a result of an inspection or investigation of an incident  
9           under section 8, the Secretary shall notify a victim or rep-  
10          resentative of a victim and provide the victim or represent-  
11          ative of a victim with an opportunity to appear and make  
12          a statement before the parties conducting settlement nego-  
13          tiations. In lieu of an appearance, the victim or represent-  
14          ative of the victim may elect to submit a letter to the Sec-  
15          retary and the parties.

16          “(d) SECRETARY PROCEDURES.—The Secretary shall  
17          establish procedures—

18                 “(1) to inform victims of their rights under this  
19                 section; and

20                 “(2) for the informal review of any claim of a  
21                 denial of such a right.

22          “(e) COMMISSION PROCEDURES AND CONSIDER-  
23          ATIONS.—The Commission shall—

1           “(1) establish procedures relating to the rights  
2       of victims to be heard in proceedings before the  
3       Commission; and

4           “(2) in rendering any decision, provide due con-  
5       sideration to any statement or information provided  
6       by any victim before the Commission.

7       “(f) FAMILY LIAISONS.—The Secretary shall des-  
8       ignate at least 1 employee at each area office of the Occu-  
9       pational Safety and Health Administration to serve as a  
10      family liaison to—

11           “(1) keep victims informed of the status of in-  
12      vestigations, enforcement actions, and settlement ne-  
13      gotiations; and

14           “(2) assist victims in asserting their rights  
15      under this section.

16       “(g) DEFINITION.—In this section, the term ‘victim’  
17      means—

18           “(1) an employee, including a former employee,  
19      who has sustained a work-related injury or illness  
20      that is the subject of an inspection or investigation  
21      conducted under section 8; or

22           “(2) a family member (as further defined by  
23      the Secretary) of a victim described in paragraph  
24      (1), if—

1           “(A) the victim dies as a result of a inci-  
 2           dent that is the subject of an inspection or in-  
 3           vestigation conducted under section 8; or

4           “(B) the victim sustains a work-related in-  
 5           jury or illness that is the subject of an inspec-  
 6           tion or investigation conducted under section 8,  
 7           and the victim because of incapacity cannot rea-  
 8           sonably exercise the rights under this section.”.

9   **SEC. 704. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
 10                   **PEATED VIOLATIONS PENDING CONTEST AND**  
 11                   **PROCEDURES FOR A STAY.**

12       Section 10 of the Occupational Safety and Health Act  
 13   of 1970 (29 U.S.C. 659) is amended by adding at the end  
 14   the following:

15       “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-  
 16   PEATED VIOLATIONS PENDING CONTEST AND PROCE-  
 17   DURES FOR A STAY.—

18           “(1) PERIOD PERMITTED FOR CORRECTION OF  
 19   SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—  
 20   For each violation which the Secretary designates as  
 21   serious, willful, or repeated, the period permitted for  
 22   the correction of the violation shall begin to run  
 23   upon receipt of the citation.

24           “(2) FILING OF A MOTION OF CONTEST.—The  
 25   filing of a notice of contest by an employer—



1           “(A) shall not operate as a stay of the pe-  
 2           riod for correction of a violation designated as  
 3           serious, willful, or repeated; and

4           “(B) may operate as a stay of the period  
 5           for correction of a violation not designated by  
 6           the Secretary as serious, willful, or repeated.

7           “(3) CRITERIA AND RULES OF PROCEDURE FOR  
 8           STAYS.—

9           “(A) MOTION FOR A STAY.—An employer  
 10          may file with the Commission a motion to stay  
 11          a period for the correction of a violation des-  
 12          ignated as serious, willful, or repeated.

13          “(B) CRITERIA.—In determining whether  
 14          a stay should be issued on the basis of a motion  
 15          filed under subparagraph (A), the Commission  
 16          shall consider whether—

17               “(i) the employer has demonstrated a  
 18               substantial likelihood of success on its con-  
 19               test to the citation;

20               “(ii) the employer will suffer irrep-  
 21               arable harm absent a stay; and

22               “(iii) a stay will adversely affect the  
 23               health or safety of workers.

24          “(C) RULES OF PROCEDURE.—The Com-  
 25          mission shall develop rules of procedure for con-

ducting a hearing on a motion filed under subparagraph (A) on an expedited basis. At a minimum, such rules shall provide:

“(i) That a hearing before an administrative law judge shall occur not later than 15 days following the filing of the motion for a stay (unless extended at the request of the employer), and shall provide for a decision on the motion not later than 15 days following the hearing (unless extended at the request of the employer).

“(ii) That a decision of an administrative law judge on a motion for stay is rendered on a timely basis.

“(iii) That if a party is aggrieved by a decision issued by an administrative law judge regarding the stay, such party has the right to file an objection with the Commission not later than 5 days after receipt of the administrative law judge’s decision. Within 10 days after receipt of the objection, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the ob-

1           jection, no decision is made on whether to  
2           review the decision of the administrative  
3           law judge, the Commission declines to re-  
4           view such decision, or no quorum is seated,  
5           the decision of the administrative law  
6           judge shall become a final order of the  
7           Commission. If the Commission grants re-  
8           view of the objection, the Commission shall  
9           issue a decision regarding the stay not  
10          later than 30 days after receipt of the ob-  
11          jection. If the Commission fails to issue  
12          such decision within 30 days, the decision  
13          of the administrative law judge shall be-  
14          come a final order of the Commission.

15               “(iv) For notification to employees or  
16          representatives of affected employees of re-  
17          quests for such hearings and shall provide  
18          affected employees or representatives of af-  
19          fected employees an opportunity to partici-  
20          pate as parties to such hearings.”.

21   **SEC. 705. CONFORMING AMENDMENTS.**

22          Section 17(d) of the Occupational Safety and Health  
23   Act of 1970 (29 U.S.C. 666(d)) is amended to read as  
24   follows:

1       “(d) Any employer who fails to correct a violation  
 2 designated by the Secretary as serious, willful, or repeated  
 3 and for which a citation has been issued under section 9(a)  
 4 within the period permitted for its correction (and a stay  
 5 has not been issued by the Commission under section  
 6 10(d)) may be assessed a civil penalty of not more than  
 7 \$7,000 for each day during which such failure or violation  
 8 continues. Any employer who fails to correct any other vio-  
 9 lation for which a citation has been issued under section  
 10 9(a) of this title within the period permitted for its correc-  
 11 tion (which period shall not begin to run until the date  
 12 of the final order of the Commission in the case of any  
 13 review proceeding under section 10 initiated by the em-  
 14 ployer in good faith and not solely for delay of avoidance  
 15 of penalties) may be assessed a civil penalty of not more  
 16 than \$7,000 for each day during which such failure or vio-  
 17 lation continues.”.

18 **SEC. 706. CIVIL PENALTIES.**

19       (a) IN GENERAL.—Section 17 of the Occupational  
 20 Safety and Health Act of 1970 (29 U.S.C. 666) is amend-  
 21 ed—

22               (1) in subsection (a)—

23                       (A) by striking “\$70,000” and inserting  
 24                       “\$120,000”;

1 (B) by striking “\$5,000” and inserting  
2 “\$8,000”; and

3 (C) by adding at the end the following: “In  
4 determining whether a violation is repeated, the  
5 Secretary shall consider the employer’s history  
6 of violations under this Act and under State oc-  
7 cupational safety and health plans established  
8 under section 18. If such a willful or repeated  
9 violation caused or contributed to the death of  
10 an employee, such civil penalty amounts shall  
11 be increased to not more than \$250,000 for  
12 each such violation, but not less than \$50,000  
13 for each such violation, except that for an em-  
14 ployer with 25 or fewer employees such penalty  
15 shall not be less than \$25,000 for each such  
16 violation.”;

17 (2) in subsection (b)—

18 (A) by striking “\$7,000” and inserting  
19 “\$12,000”; and

20 (B) by adding at the end the following: “If  
21 such a violation caused or contributed to the  
22 death of an employee, such civil penalty  
23 amounts shall be increased to not more than  
24 \$50,000 for each such violation, but not less  
25 than \$20,000 for each such violation, except

1           that for an employer with 25 or fewer employ-  
2           ees such penalty shall not be less than \$10,000  
3           for each such violation.”;

4           (3) in subsection (c), by striking “\$7,000” and  
5           inserting “\$12,000”;

6           (4) in subsection (d), as amended by section  
7           705, by striking “\$7,000” each place it occurs and  
8           inserting “\$12,000”;

9           (5) by redesignating subsections (e) through (l)  
10          as subsections (f) through (m), respectively; and

11          (6) in subsection (j) (as redesignated by para-  
12          graph (5)), by striking “\$7,000” and inserting  
13          “\$12,000;”.

14          (b) INFLATION ADJUSTMENT.—Section 17 of such  
15          Act is further amended by inserting after subsection (d)  
16          the following:

17          “(e) Amounts provided under this section for civil  
18          penalties shall be adjusted by the Secretary at least once  
19          during each 4-year period beginning January 1, 2016, to  
20          account for the percentage increase or decrease in the  
21          Consumer Price Index for all urban consumers during  
22          such period.”.

1 **SEC. 707. CRIMINAL PENALTIES.**

2 (a) IN GENERAL.—Section 17 of the Occupational  
3 Safety and Health Act of 1970 (29 U.S.C. 666) (as  
4 amended by sections 705 and 706) is further amended—

5 (1) by amending subsection (f) to read as fol-  
6 lows:

7 “(f)(1) Any employer who knowingly violates any  
8 standard, rule, or order promulgated under section 6, or  
9 of any regulation prescribed under this Act, and that viola-  
10 tion caused or contributed to the death of any employee,  
11 shall, upon conviction, be punished by a fine in accordance  
12 with title 18, United States Code, by imprisonment for  
13 not more than 10 years, or by both, except that if the  
14 conviction is for a violation committed after a first convic-  
15 tion of such person under this subsection or subsection  
16 (i), punishment shall be by a fine in accordance title 18,  
17 United States Code, by imprisonment for not more than  
18 20 years, or by both.

19 “(2) For the purpose of this subsection, the term ‘em-  
20 ployer’ means, in addition to the definition contained in  
21 section 3, any officer or director.”;

22 (2) in subsection (g), by striking “fine of not  
23 more than \$1,000 or by imprisonment for not more  
24 than six months,” and inserting “fine in accordance  
25 with title 18, United States Code, or by imprison-  
26 ment for not more than 2 years,”;

1           (3) in subsection (h), by striking “fine of not  
2           more than \$10,000, or by imprisonment for not  
3           more than six months,” and inserting “fine in ac-  
4           cordance with title 18, United States Code, or by  
5           imprisonment for not more than 5 years,”;

6           (4) by redesignating subsections (j) through  
7           (m) as subsections (k) through (n), respectively; and

8           (5) by inserting after subsection (i) the fol-  
9           lowing:

10          “(j)(1) Any employer who knowingly violates any  
11          standard, rule, or order promulgated under section 6, or  
12          any regulation prescribed under this Act, and that viola-  
13          tion causes or contributes to serious bodily harm to any  
14          employee but does not cause death to any employee, shall,  
15          upon conviction, be punished by a fine in accordance with  
16          title 18, United States Code, by imprisonment for not  
17          more than 5 years, or by both, except that if the conviction  
18          is for a violation committed after a first conviction of such  
19          person under this subsection or subsection (e), punishment  
20          shall be by a fine in accordance with title 18, United  
21          States Code, by imprisonment for not more than 10 years,  
22          or by both.

23          “(2) For the purpose of this subsection, the term ‘em-  
24          ployer’ means, in addition to the definition contained in  
25          section 3, any officer or director.



1       “(3) For purposes of this subsection, the term ‘seri-  
 2       ous bodily harm’ means bodily injury or illness that in-  
 3       volves—

4               “(A) a substantial risk of death;

5               “(B) protracted unconsciousness;

6               “(C) protracted and obvious physical disfigure-  
 7       ment; or

8               “(D) protracted loss or impairment, either tem-  
 9       porary or permanent, of the function of a bodily  
 10      member, organ, or mental faculty.”.

11      (b) JURISDICTION FOR PROSECUTION UNDER STATE  
 12      AND LOCAL CRIMINAL LAWS.—Section 17 of such Act (29  
 13      U.S.C. 666) (as amended by this Act) is further amended  
 14      by adding at the end the following:

15           “(o) Nothing in this Act shall preclude a State or  
 16      local law enforcement agency from conducting criminal  
 17      prosecutions in accordance with the laws of such State or  
 18      locality.”.

19      **SEC. 708. PENALTIES.**

20           Section 17(n) of the Occupational Safety and Health  
 21      Act of 1970 (as redesignated by section 707(a)(4)) (29  
 22      U.S.C. 666(n)) is amended by adding at the end the fol-  
 23      lowing: “Pre-final order interest on such penalties shall  
 24      begin to accrue on the date the party contests a citation  
 25      issued under this Act, and shall end upon the issuance

1 of the final order. Such pre-final order interest shall be  
 2 calculated at the current underpayment rate determined  
 3 by the Secretary of the Treasury pursuant to section 6621  
 4 of the Internal Revenue Code of 1986, and shall be com-  
 5 pounded daily. Post-final order interest shall begin to ac-  
 6 crue 30 days after the date a final order of the Commis-  
 7 sion or the court is issued, and shall be charged at the  
 8 rate of 8 percent per year.”.

9 **SEC. 709. EFFECTIVE DATE.**

10 (a) GENERAL RULE.—Except as provided for in sub-  
 11 section (b), this title and the amendments made by this  
 12 title shall take effect not later than 90 days after the date  
 13 of the enactment of this Act.

14 (b) EXCEPTION FOR STATES AND POLITICAL SUB-  
 15 DIVISIONS.—The following are exceptions to the effective  
 16 date described in subsection (a):

17 (1) A State that has a State plan approved  
 18 under section 18 of the Occupational Safety and  
 19 Health Act of 1970 (29 U.S.C. 667) shall amend its  
 20 State plan to conform with the requirements of this  
 21 Act and the amendments made by this Act not later  
 22 than 12 months after the date of the enactment of  
 23 this Act. The Secretary of Labor may extend the pe-  
 24 riod for a State to make such amendments to its  
 25 State plan by not more than 12 months, if the

1 State's legislature is not in session during the 12-  
2 month period beginning with the date of the enact-  
3 ment of this Act. Such amendments to the State  
4 plan shall take effect not later than 90 days after  
5 the adoption of such amendments by such State.

6 (2) This Act and the amendments made by this  
7 Act shall take effect not later than 36 months after  
8 the date of the enactment of this Act with respect  
9 to a workplace of a State, or a political subdivision  
10 of a State, that does not have a State plan approved  
11 under such section 18 (29 U.S.C. 667).

○